

USURY

A Explain'd ; *Story*

O R,

Conscience Quieted in the Case

O F

Putting out Mony

A T

INTEREST.

Condemned at Rome.

Mar. 11. 1704.

By PHILOPENE S.

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condemned at Rome. Mar. 11. 1704

PRINTER

TO THE Courteous Reader

GEntle Reader, in compliance with my Calling, I present thee with a small Treatise, upon the Case of Putting out Mony at Use, The Subject is of a Publick concern, and the Press is ordered to the Publick good. Written Papers, are like Spirits, appear to some, and not to others, and often Prove illusions. The Publick eye is the quickest and the surest in discerning good, from evil.

The

The Printer.

The Author who writ, what I now Print, is no farther Known to me, than by the Name of *Philopenes*, a lover of Poverty, or a friend of the Poor. If he be, what his name implies, The fitter he is, to discourse impartially a Point, in which Reason alone can concern him; I hope he will not take it in evil Part, that I set forth for some small Advantage, what for more than a year, has past thro' several hands; That were to blame his own Judgment, in letting it be seen by so many, or to give suspicion of some dark Design: by avoiding the Publick.

If what he writes be True, 'tis one of those Truths, which ought not to be conceal'd, nor hidden under the Bushel; that were envious. If erroneous, not to secure Error by discovery, that were uncharitable. If he fears Truth may displease some,
he

The Printer.

he might as well desire to put out all light, as offensive to weaker sights, unuseful to the Blind, and unacceptable to such, as wilfully shut their Eyes.

The Book is but short, well if it be clear ; short as it is, Divines, Lawyers, and all concern'd in Mony ; may find in it somewhat for their Turns. Be it what it will, take it for what it is : The Print is only mine, and may be thine, too at a small Charge, *Farewell.*

THE

Author

TO THE

R E A D E R.

Z *Eal when Kindled by Divine Love, temper'd with Humility, fed by the Spirit of Meekness, and govern'd by Discretion cherishes Piety and Observance. Usurpation of Rigor, carried on, with excesses of Fervor, Not according to Knowledge, Rom. the 10th. disquiets both. To make a Sin, of no Sin, is as irregular, as to make no Sin, of a Sin. To declare unlawful, what consists with Conscience, breeds an undervalue of the Declarer, no less than if he declare lawful, what Conscience condemns.*

Con-

The Author to the Reader.

Conscience censures nothing, but upon Evidence of Obligation; Prepossession of Mans Liberty, is so good a title, that it cannot be overthrown, but by a manifest Proof, of Gods restraining it. To alledge a Command, for his not his, is to impose upon God and Man, the worst of Presumptions.

Faith requires an Evidence of Credibility, in reference to what we are to believe; and Part of that we are to believe, are the Rules of well and evil Doing. Whence clearly ensues, a certainty must be had of those Rules; For where a Rational Debate is admitted upon the whether, an Action be sinful, or no, so as to leave it undecided, Possession of Liberty against Restraint, holds good in Reason and Law, where Possession carries so great a Portion, that no man is oblig'd to relinquish it, before evidence brought in against him for its forfeiture, and sentence Pronounced in due form, by

The Author, to the Reader.

a Competent Judge. Without this whoever disturbs, the quiet Possessor, is guilty of Violating the Peace. This discourse I have in Occasions Promoted against Modern Pretended Reformers, in Point of Religion, in the Present Case, I renew it.

A settled Practice, of Putting out of Money, has been long in Possession with all Ranks and Qualities, such as take upon them to Reform it, must Produce Evidence, and Sentence given by a Lawful Judge against it; whether any Verdict has yet past to that Purpose, be your self the Arbitor, after a due Perusal, of what I shall impartially set down, in this short Tract.

My Method is to Discourse the Matter in hand, as to the Laws of Nature, Scripture, and Church. I wish my Endeavours may answer my Intentions, or at least, that my Intentions, may justify my Endeavours, in Case they answer not thy Expectation. Farewel.



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PART. I.

As to the Law of Nature.

CHAP. I.

*The Case Considered as to the Nature
of M O N Y.*

lib. 4.
c. 1.

A Ristotle defining Libera-
lity, to be a Vertue mo-
derating the Love of
Mony, and Prompting to
spend ; by the dictates of Reason. Un-
der the Name of Mony, comprehends all
things priz'd by Mony, as the standing
Measure of their Worth. The present
Discourse admits not of so much Lati-
tude, but confines it solely, to the being
the Measure of Valuation, and Price of
B Wares ;

Wares; so becoming the common Instrument of Sales and Purchases, the Soul of Traffick, and the Life of Markets.

As to its Origin not over Noble, I find it to have been the Child of Want, tho' since become the Parent of Abundance. When all other Creatures bearing different Coins, issued out of the Mint, if I may be so bold to say, of nothing: No Mony appear'd, which perchance may have been a Reason, why the Serpent brib'd our first Parents to Rebellion, not with Mony, but Ambition, and Pleasure.

All other Beings had God for their Creator, Mony, as to its Form, was the Creature of Man, and that only after his Fall, being multiplied upon Earth; Divisions of Property then, enter'd the World, from whence sprung a Necessity of Commerce; *First*, By Bartering one thing for another: In success of Time, Trade improving, a Current Measure, for the Price of Things, was judg'd requisite, and therefore settled by each Superior, in his Respective Dominion, and admitted by Communities. So that, as the first intercourse of Trade, was enter-
tain'd

tain'd by Exchange of one thing, for another, Mony became the Vicar, as it were, of all things, And by consequence, was design'd to be of no less Profit. Otherwise the Exchange of other Commodities for Mony, would have been unequal, in giving what might Produce Gain for Mony, which should afford None.

Such was the first Institution of Mony, Rising by Degrees to that sway that *Rome* it self, with *Sallust.in* its grave stately Senat, would *Jug.* have been unsubstu'd, had a Purchaser, of sufficient Wealth, appeared before it. This moves no small wonder in me, that Mony vulgarly should pass for barren, and unfruitful, seeing it renders to its Owner, whatever Nature produces. For tho' of it self, or rather its matter yield nothing; Yet by the Artificial Being it has from Man, it gives Profit at least equal to other Productions of Art, affording Rent, for the use of them. Nay brings in much greater increase, to the skilful Mannager.

The Mountebank in St. *Austine*, to raise expectation, took upon him to

De Trin. tell the People, what was each ones wish and desire, Curiosity having gathered a Numerous gaping Auditory, he acquits himself of his Promise, saying; *They would all buy cheap, and sell dear.* This assuredly is the constant intent of such as expend, to encrease Mony in its Use. For he that buys cheap, and sells dear, in what he buys, ensures his Principal with Profit; so that to receive advantage for Mony, without sinking the Principal, is but a sequel of its being the Price of Wares. On this account I guess, a Mony'd Man, is said to have a good *Fund*, from the Latin *Fundus* a Farm, or a good *Stock*, in token of its Fruitfulness.

Of what Metal the first Mony was, or whether of any, I were yet to learn, had I hopes of a Master to Teach me. But the quality of the Matter, is indifferent to the character it bears. This gives it its worth, and Men may bestow it upon Leather, Lead or other Materials in lieu of Gold, and Silver.

Mony methinks, has much of the nature of words, tho' not so frankly parted with. Both are Mans Tenants at Will,
both

both order'd to Interchange and Communication, Words of thoughts, and Mony of things, neither to be falsified, but to be directed to the end, for which they were Fram'd, general Conveniency, and improvement. By a more or less Tendency, to this end, the good, or bad use, of either is determin'd. Now to decide whether the putting out of Mony at a modest Rate, drive at that end, or no, who can judge better, than the whole of a Nation.

But Usury intervenes Let him who advances so bold a Censure, Vouchsafe to mind, how in Number He's much out-voted, equall'd at least in Wisdom, and Probity by those, who teach and Practice it, as *Lawful*. These have open'd the law of Nature, Scripture, and Church, yet do not find it culpable; People find conveniency in a ready Circulation, Mony otherwise would lie buried with dead Trade, the generality would be the worse, and no particular the better. Neither the nature of Mony then, nor its final cause the Publick good, do any ways oppose the putting out of Mony at Use, but promote it, as much as the exposing other

Goods, of which, Money is the Substitute. This might suffice, to the quieting a well meaning Conscience, but a further discovery of the Nature of Usury is expected from me, to which now I proceed.

CH A P. II.

*The Original Notion of Usury, with
its N A M E S.*

Resolving lately upon the performance of what, almost a year since, I had engag'd my Promise to the Instances of some Friends; it was my chance to fall in at the Stationers, with two short Treatises of Usury; the one written by an English Knight, *Sir Robert Filmer*, and Publish'd by *Sir Roger Twissden*, with his Addition of Preface; the other of a Reverend *French* Clergyman, *Monsieur Du Tertre*; I found them as opposit in the Point, as if they would even in this, have maintain'd the National Feud, had the one Known the other.

But

Usury Explain'd.

7

But *Du Tertre's* Rhetorick, takes its full Career against a Divine of his own Country, who it seems in a Letter, had joyn'd with our two Knights, in upholding, that no Usury is Condemn'd by the Law of God, but such as exacts upon the Poor. *Du Tertre* on the contrary seems to hold forth, that all Interest taken for Mony put Out, without sinking the Principal is Usury. Neither hits the mark of Truth: the Knights fall short, and *Du Tertre* shoots over; to level my aim better

I begin from the Name of Usury deriv'd from the Latin *Usura*. And this in Property of speech imports *Use*. So that Usury in strictness of Terms, implies no more, then the use of Mony, in it self unblameable. How then did so foul a Vice come by so fair a Name? You might as well enquire, why the Furies were call'd *Eumenides*. I know in Greek its called *τοκός*. for the resemblance paying Interest has, with the grief of Child-birth. In Hebrew its stiled *Neshec* נֶשֶׁח The Bite of a Dog, in *Chaldaick* *Cabullia*, an Undoing, yet by the Jews, it was also nam'd *Tarbitb* an Increase. *Ad Probri*

effugium, (*In cap. 23. Deut.*) says ; à *Lapide uti à Latinis ,honesto Nomine vocata est Usura.*

Wherefore my Inference is, That the gentle Name of *Usury*, must cover sore Aggrievances, and heavy Extortions, as the *Greek*, the *Hebrew*, and *Chaldaick*, give us to understand; but these are not to be found in our Case; This therefore must be clear of *Usury*; a Monster detestable, even to Heathens, a wonder it should be so familiarly entertain'd, and welcom'd among Christians, as is the Practice of Putting out Money, a Token of its different Nature, from what those Names imply, which having premis'd; I shall now endeavour to Dive after its Origin; Reason, and History, discovers it to me, for such as follows.

Upon the first Employing of Money, of which probably he had most, who had the most to Sell, by Changing a Stock of Goods into a Stock of Coin, some Engrossing the greater Share, put others in Necessity of Borrowing; then Avarice in the Lenders, produc'd Oppressions, with other evil Arts, of unlawful Gain, for the Use of what was, or ought to have

have been Lent, according to the Law, of Natural Charity.

Such was the Proceeding, of the wealthier *Romans*, with the Commonalty, as is to be seen in History, to the no small Disturbance of that only then Infant Commonwealth, let one Example suffice. The horrid sight of a stout old Soldier, scourg'd and gor'd with his own Blood for failure of Paying Interest, at the Time prefix'd, enrag'd the People to a furious Sedition. The like perhaps, may have passed, among the *Jews*; We have a kind of Precedent. *4 King. Chap. 4.* Where the Widow to *Elisha* says: *Ecce creditor venit ut collat duos filios ad serviendum sibi. Behold the Creditor is come, to take away my two Sons, to serve him.* Exorbitant Rigour, for a Debt, which considering the Condition, of the Widow, of a Poor Prophet, was not probably very great.

Usages so cruel, could not but excite a horror of Usurers, even in such, as by the Law of Nature, govern'd themselves; Use-Mony therefore, was by the *Romans* in the 12 Tables stinted to 12 per Cent. then to 6, after to 3; and finally in the
time

time of *Gemutius* Tribune, to remove all occasions of like Encroachments, a Prohibition of Use-Mony was Published, in favour of the People. No less was put in Execution by *Agis*, the *Spartan*, and not the *Athenian* General, as some have it, and ordering all the Account-Books of Usurers, to be burnt, in the Market-place. *Agésilas* applauding he had never seen a nobler Fire.

But the Prohibition among the *Romans*, soon grew out of Date, and tho' renewed by *Cæsar*, to ingratiate himself with the Commonalty: yet putting out Mony at Use, by Necessity was reviv'd, in his Successor's Times, growing to the extravagant Heighth, of *Cent. per Cent.* if you may believe *Accursius*, a Famous Civilian, Cited by Sir *Roger Twisden* in his Preface. As for my Part, I question not, but all Oppressions, Exactions, and Frauds, exercised in the putting out Mony, were included in Usury, which may have been the Cause, why in the Days of Old, witness *Cato*, Thieves were Condemn'd to the Double, Usurers to the Quadruple: To which Custom, Peradventure, the Saying, (of
Zachens

Zachens might relate (*Luke 19.*) *Reddo quadruplum* ; you may see more in *Covarruvias, lib. 3. Variarum, c. 1. n. 5.* of the aversion even Heathens had to Usury.

This to have been the true, and sole Notion, of Usury as Prohibited, was *Calvin's* Opinion, with his Followers, amongst which our two Knights, allowing all Usury, not render'd sinful by oppressing the Poor, but against Reason; It being no less Usury, to take beyond what is due from any, for the Use of Money; since Persons of Fortune, tho' never so wealthy, have Right to what is just. I only infer, That a commodious Rate, in the common Judgment of all Parties, can be no Usury; taking Usury, as hitherto describ'd from its Origin, and express'd by its Names. I come now, to its strict Definition.

C H A P. III.

The Definition of U S U R Y.

Sir Robert Filmer sports in his first Paragraph, teasing Dr. Fenton, and in him some others of the Church of *England*, for their Definition of *Usury*. I cannot excuse the Dr. of some Confuseness. For where a word may signify differently, to take away Equivocation, one should first distinguish, and then define. This Method I shall observe with the antient Divines.

These make a three-fold Division of *Usury*. First it may be taken, for a *Gain* which is *Usurious*. 2dly, For a *Bargain* upon such *Gain*. 3dly, For the *Intention*, or *Will* of such a *Bargain* or *Gain*. The First is term'd *Actual Usury*. The Second is *Usury express'd by Covenant*. The Third is *Usury purely Mental*. The two Latter derive their Malice, from the First, as being the Object of both, all Promises or Intentions taking their Qualification,

on, from the Action, Promised or Intended ; Wherefore refixing the Word *Covenant* or *Will*, to the Definition of *Actual Usury*, all three will be Defin'd Thus.

Usury in the first Acceptance, is a *Gain* immediately for *Lending*, or for *Money Lent as Lent*. Divines generally Agree in it. It's said immediately for *Lending* or *as Lent*. To exclude all other Titles of *Lucre*, as *Gratitude*, *Friendship* in the Borrower, or other *Considerations*, hereafter to be specified. *Gain* therefore is the *Genus*; by the Rest, *Usury* is differenced from other Acquisitions. Hence of course follow the two other Definitions, viz. The Second is a *Covenant*; the Third is a *Will* or *Purpose* of *Gain* purely for *Lending*.

Sir Robert opposes thus : *Gain* undoubtedly is a false *Genus*, for certainly, *Usury* is a *sin* of *Commission*, and therefore an *Action* of *Operation*. So that *Lucre* or *Gain*, which is only a *Passion* or *Product* of *Lending*, cannot be the *Genus* of it.

Ans. How far Sir Robert's Skill exceeded in Law, I know not, His Logick certainly proves somewhat unfaithful to him.

him. It's granted then that *Usury* is a Sin of *Commission*, and an *Action* of *Operation*, if it so please him. And so is *Gain for Lending*. Neither is *Gain*, formally, and strictly speaking, the immediate Product, of *Lending*, but of taking, and it includes *Active* and *Passive*; *Active*, naming the Person Gaining, *Passive*, by naming the Interest Gain'd; *Gain* then is an Acceptance of Interest, exclude the Acceptance, neither *Lending*, nor *Mony*, nor both together, will make up *Gain*. But not to be so scrupulous in *Philosophy*. Grant *Gain* to be a Product of *Lending*, it may be as well a Product of *Selling*, or *Letting*, why may not *Gain* then be drawn into a *Genus*, in respect of the several ways of *Gaining*, of which *Gain* by *Lending* is *Usury*?

He presses. *Lending* for *Gain*, is not *Lending* but *Letting*. Besides the *Gain* is not for the Bare Act of *Lending*, but *Using* the thing Lent, that Men give *Usury*.

Ansiv. The instance being made in Dr. *Fentons* Words, If I may believe the Knight, brings him in guilty, not only of *Contradiction*, which Sir *Robert* urges upon him, but of a very gross

gross Error in Morality. For if according to the *Dr's* Definition, *Usury* is a *Covenant of Lucre for Lending*, and *Lending* for *Lucre*; be *Letting*, a *Covenant for Letting*, by consequence is *Usury*. A Position unheard of.

To the Difficulty. *Lending* for *Gain*, is no *Letting*, but *Lending*; and *Lending*, and *Letting* essentially differ, as will appear more hereafter. *Lending* admits of no *Recompence*, by way of *Justice*. *Letting* do's, I willingly yield to the Addition, that *Gain*, is not for the bare act of *Lending*; but the *Lending* we speak of, includes both *Act* and *thing* as affected by the *Act* of *Lending*. For who *Lends*, and *lends* nothing? By *Lending* a *thing*, the *Use* of it is given, as it is not in *Letting*, and for what is given, to require *Gain*, is *Usury*.

Towards the full Intelligence of the Definition, it will not be amiss, to open the two-fold Sense of the Word *Lending*, express'd in *Latin* by two Verbs *Mutuare*, and *Commodare*, to *Lend* things, not to be consum'd, in the *Use*, as a *Horse*, or *House*, with an *Obligation*, that the same individually be restored
is

is what corresponds to the *Latin Commodare*, to lend things which are Spent, in the Use ; as Corn, Wine, and Mony, with a tie of having as much restor'd, and of equal Worth, tho' not the very self same, is what implies the Latin *Mutare*.

Between these two *Lendings*, this diversity intercedes. In the *First*, the Lender disposes only of the Use, of what he lends, not to be consum'd. In the *Second*, Use being inseparable from Consumption, the Lender grants both Use and Consumption of the thing. The First grounds an Action to the thing Lnet. The Second grounds an Action to as much, and as good in the same kind. As to the First, What may be *Lent*, may be *Lett*, whether Mony, or Goods, which perish in the Use may be *Lett*? shall be discuss'd. *Plautus* applies *Locare*, to let, Mony, and place ones Mony, is the Common Expression.

But before I Proceed to examine this Point, I shall lay down some Truth, very matterial, to the main? Truth I think not to be shaken, as being rooted in the very Definition of Usury.

C H A P. IV.

*Positions drawn from the Definition
of U S U R Y.*

First. Gain, upon any Account, but Lending, is no Usury. The Proof. Usury is a Gain, for a thing Lent as Lent. But Gain upon any account, but that of Lending, is no Gain for a Thing lent as lent, therefore no Usury.

Secondly, Usury is a Sin against the Law of Nature. Thus S. Thomas, with the rest of Divines. The Proof. A Lender by giving the Use of what he Lends, makes the said Use no more his own, but to exact Payment, for what's no more ones own, is an Injustice, visible by the Law of Nature; therefore to receive Payment for what's Lent, as Lent, in which Usury consists is against the Law of Nature; and therefore, as Such, 'tis reduced to Stealth, forbidden in the Seventh Commandment.

C

Thirdly.

Thirdly. *Not only Extortion, or Exaction upon the Poor, is Usury.* The Proof; Increase for Money Lent, as Lent may be required of the Rich, and this is Usury; but in this no Oppression of the Poor; therefore Usury consists not only in exacting upon the Poor, as our two Knights hold, and the Author of the Letter impugned by *Du Tertre*, seem to affirm.

Fourthly, *Whatever is not reducible to Stealth, and against the Law of Nature, can be no Usury.* This is but a sequel of the second Assertion. The Proof. If all Usury be reducible to Stealth, and against the Law of Nature, nothing can be Usury, which is not against the same Law, otherwise this Contradiction would ensue, That all Usury is against the Law of Nature, and that some Usury is not; now to make nearer our Case.

Fifthly, *A Joint-Agreement in a Body Politick, for the Putting out of Money at Use, cannot be against the Law of Nature.* Proof. Such an Agreement would render it no more Stealth, or Injurious to any. *Volenti non fit injuria.* It would accord with the first Rule of Equity; *Do as you would be done by*; It cannot therefore oppose the
the

the Law of Nature, being so conformable to it.

Conclusion. *The said Agreement passed into Custom, or Law, for the taking Interest for Money put out, makes it to be no Usury.* The Proof. It makes it neither to be Stealth, nor against the Law of Nature, but what's not against the Law of Nature, or Stealth, is no Usury; therefore it makes it no Usury.

If in the Proof of any of these Truths, Fallacy imposes upon me, I shall be grateful to the Discoverer. I am no stranger to the Vertue of Law, as to Temporal Concerns; it is not only Lawful, but Conscience, to submit ones private Judgment to the Publick. Law regulates all Contracts as to *Meum* and *Tuum*, in so much as Property or *Domaine*, by Divines, as well as Lawyers, is defin'd with deference to Law. *Property*, they say, *Is a Right in a thing, extending its self to all Uses, and Dispositions of the said thing, not forbidden by Law.*

One may Object. It is not in the Power of any Legislative Authority, to make Usury no Usury, or Stealth no more Stealth, and to take Interest for Money

Put out, is both Stealth, and Usury.

Ans. Though it be not within the Verge of Human Jurisdiction, to make Usury, no Usury, or Stealth, no more Stealth; yet it lies in the compass of that Power, and even of a Particular's Power, to prevent from being Usury, or Stealth, what otherwise would be so, not by altering the Law of God, and Nature, against Stealing and Usury, but by a voluntary Change, or Abatement of Property and Right. For Example. One bestows a Parcel of Ground to be a Common, for the Poor. Had the Poor turn'd in their Goods, before its being made Common, they had been guilty of Trespas, and Stealth, which they incurr not, after the Right of Common granted them. The Case, if I mistake not, is ours: If a Person will freely give Five *per Cent.* and Security for the Principal, you may take it, as his Gift, standing good in Law, without Usury. This is what the Nation agrees to, including each Particular's Consent; Perhaps, in Recompense of the Good, accruing to the general Ease, and publick Profit; and Perchance, by way of Penalty, for
Prodigals

Prodigals and Spendals; so that what excluding this general Consent and Accord, might have been Usury in Vertue of the said Agreement, ceases to be such, For he that takes *5 per Cent.* takes it as granted by Law and Custom, for Mony Put out; and not as Covenanted by himself, for *Mony as Lent*, Custom being Previous to the Putting out of Mony, and including a general Concurrence, which makes the Interest allow'd spontaneous, and freely given.

Nor doth this Procedure intrench upon any, but equally Provides for all, since as a Person putting out Mony, must Receive, so taking up, he pays as much. And it often happens, that the same Person, who has Mony out, is forc'd to take up, Suppose then he pay as much as he receives, Where is the Gain? This Discourse, not manag'd, as I find by others, I think fit to Promote by the following Enquiry.

C H A P. V.

*Whether the Law of the Land render
the taking 5 per Cent. safe in
Conscience?*

EXception may be made against the Question, as grounded on a false Supposition, and that we have no Positive Law for the Putting out Money at Use, but that it is purely Permissive; That Law may even permit Usury, to avoid greater Evils, as Divines affirm, yet not Justifie it, as to Conscience.

Ans. That we have no Positive Statute Law, which as Sir Robert Filmer, pag. 92. informs us, varies as to the Case, it matters not; for 'tis enough we have Law. But we have even Statute-Law; for the Statutes against Interest for Loan, may be understood of Interest for pure Lending; and not only may, but must be so interpreted, all Gain *not purely for Lending*, being no Usury,

ury, as has been made out from its Definition. Much more since the *Constant Practice*, as the same Sir Robert tells us, of the *Common Law of this Land*, and also *Chancery in Point of Equity*, doth not only allow Interest, where there is a Contract for it, but also gives it where there is none. What better Interpreter of Statute-Law, than Common Law and Equity?

This Practice becomes Law, according to the Decision. *L. De quibus 32. ff. de Legibus. Inveterata consuetudo, pro Lege non immerito Custoditur.* An antient Custom is deservedly held for Law, and *Lege 35. de Legibus sed & ea quæ longa consuetudine approbata sunt, & per annos plurimos observata, velut tacita civium Conventio, non minus, quam ea quæ scripta sunt servantur.* But also those things, which are approved by long Custom, and have been observed for many Years, as a tacit Convention of the People, are no less to be observed than Written Laws. *Quid enim interest L. 72. ff. de Legibus. An suffragiis Populus suam voluntatem declaret, an Rebus ipsis, & Factis.* For what imports it, whether the People declare their Wills by Suffrages or Deeds?

True it is, Where the Legislative Power lodges not in the People alone, as it doth not with us, the Kings Tacit consent, is a requisit, and in our Case we have it more than Tacit, since the Courts which all act in his Name, adjudge Interest to be pay'd ; Now if practise is not only the best Interpreter of written Law, but kept up for the space of some years, even prescribes against Law, and its self often becomes Law, who can except justly against the Question made, as being upon a false Supposal ?

Neither can our Law be said, to be meerly Permissive, for a Permissive Law, grants no Action to an Usurer against the Borrower. But our Judges, Positively uphold the Creditor, as to a Right he has by Law, to receive Interest; The Law then must allow of that Right, Judges being Oblig'd, to decide according to Law; Whence the Law appears to be Positive, and not purely Permissive ; for were it meerly Permissive, it could give no Right, as is clear, to take Interest, but only wink at it, whereas our Law, grants Procuration Mony, to such, who makes it their Business, to find, and Put out
Mony

Mony for others. And is not this Positively to cooperate by the encouragement of Reward? The Law of the Nation then is clearly Positive, for the Putting out Mony at Use.

This Positive Law, I hold to be a plain Justification of the Practice, even as to Conscience; It being to be Presumed, in favour of the Law, that it would not Positively concur to what were unjust, were Usury; were against the Law of Nature and God. This Presumption ought to stand good, until such time as the iniquity of the Law be Evidenc'd, which has not yet been done.

To question its Justice, betrays an Ignorance of what force Law is. It even overrules and debars Natural Right, of Particulars, as in the Cases of; Prescriptions, Last Wills, and Minors, who tho' true Masters of their Estates according to the Apostles *Cum sit Dominus omnium*, are hindred by Law to dispose of them. What more Sacred and Binding than an Oath? Yet by the Law both of *Castile*, and *Portugal*, all *Obligations, Contracts and Conventions*, appertaining to the Temporal Court, if Sworn to, are made Void in
Law

Law, to the end Causes appertaining to the Temporal, in vertue of an Oath, may not devolve to the Spiritual Court, to the Prejudice and limitation of the Temporal Jurisdiction; so the Council of *Trem*, to say nothing of Clandestine Marriages, (*Sess. 25. c. 16. de Reg.*) Annuls even an Oath of *Renunciation*, made two Months before Profession. Evidence, of what force Law is, in Cases much harder than ours, in which, all Parties making up the Legislative Power agree, as to a certain Rate, for Mony to be Put out, as Profitable to the Publick, and a fit means to prevent those Strifes and debates, which might arise from the Titles, Divines generally allow of, for the taking Interest. *viz. Emergent Damage, Lucre ceasing, and Danger of Principal*, which often vary, and are now more, now less.

Our Law then, stands upon good grounds, and makes good the ground it stands on; It being a Tenent amongst Divines, that Law takes away doubt, it being in Possession of Command, Nay tho' probable Reason, but not evident, appear against its uprightness, it still keeps its Post. (*Suares de Legibus lib. 1.*) Other-
wise

wise there being few Laws, against which some objection might not be started, too much license in questioning them, would encourage to *Non-Compliance*

So that in Answer to the Question, my Opinion is, ever vailing to better Reason, that more Conscience, ought to be made of condemning the Putting out Mony, as Authoriz'd by Law, than of Practising it. For were its Lawfulness doubtful, and not in so high a degree Probable, if not Evident; as both Reason and Authority renders it, still Possession stands for Law. Wherefore Divines hold it no wise requisit, - That he that Puts out Mony, either know the grounds of the Law, or express the ways or Titles justifying it. But it suffices, he intend to do what is Just, and no ways Offensive to God; As in Prudence he may judge to be what Law, and constant Practise stand for.

This is the Decision of *Bartolus. L. Quis fugitivus §. apud Leonem de Aedil. Edict. of Navarrus, Binsfield, and Tiracquellius*, viz. That a Contract in Use, with Learned Men, of known Integrity, though in Law somewhat dubious, obscure, and moving

moving some apprehension of Usury, is not to be judg'd Usurious; What would they have said to the Case, manifestly upheld by Law and Practice? I close this Paragraph with this Syllogism of S. Tho. quod l. 9. Art 15. which may serve as a Rule in this, and the like Cases. *Illud quod vergit in Commune Periculum, non est ab Ecclesia sustinendum, sed Ecclesia sustinet, ergo non est periculum Peccati Mortalis.* That which inclines to a Common danger, is not to be born with by the Church, but the Church bears with it, therefore no danger of Mortal Sin. Therefore no Usury.

C H A P. VI.

*Whether Mony be Capable of being
L E T T.*

THe Decision of this Question alone, might put an End to the present Controversy; for if Mony can be Lett as other Moveables, or Immoveables are, like Interest may be receiv'd, it being for *Letting*, and not for *Lending*.

That Mony is not capable of *Letting*, is commonly discourf'd thus: *Location* or *Letting*, is a Contract by which a Person's Goods or Tenements are granted for Wages or Rent: So that what belongs to the Hirer, is the bare Use of what he pays for, the thing Lett still appertaining to him, who Letts it. But Mony is consum'd in the Use, How then can it be Lett to Use, which makes it away?

*My Assertion is, That MONT may
be LETT.*

That it may be Lett to other uses, than Spending, as for a Show, tending to Preservation of Credit; and not to Cheat, as Sir Robert flurts at Catholick Divines, or to be a Pledge, is owned by St: *Tho. 2da 2da*, and by the Schools in general, but denied by him, in order to Spending; By reason he supposes, that Property of things consum'd in the Use, is not distinct from the Use of them, so that who has the Use, has Property of them too. The Hirer then having the Use, has both; and therefore, is no more a Hirer, but a Proprietor, for the Time he has the Use, so that Paying Consideration for it, He'll Pay for what is his own, and the Lender receive Interest for what belongs to the Borrower; and in this he places the Sin of *Usury*.

What the Holy Doctor supposes of the indistinction of Property and Use, in things consumptible, since his time, has not only been question'd, but the opposite goes for the more current among Divines,

Divines, approv'd by no less then five Popes, witness *Lessius* (*De Just. lib. 2. c. 3. Dub 8. n. 38.*) in this. (the now more probable opinion.) I see no greater difficulty in letting Mony, than Letting a Horse, for the Hirer pays only for the Use, the Property still remaining to the Letter.

But the Property of what; Since Mony in the use Perishes, to him that lays it out?

Ans. That is to say, Mony is in the time 'tis us'd, and no longer, and for that time the Owner lets it.

But that's almost Momentary.

Ans. Be it never so short, 'tis preferable, or at least, *equivalent* to the longer use of a Horse, or House. This holds, speaking of the same Physical and Individual Mony, which in its uses Perishes not in it self, but to its Hirer. Yet Morally it still remains, in the right the Creditor has to as much, it remains in the Security for its Reimbursement, it may also remain in the effects of using it, redounding to the Hirers Profit. So that the Letter retains the Property, tho' not the Possession, of as much as the Hirer owes, and according to Law, may dispose of it by Gift or Sale.

To

To the confirming what has been said, upon due Reflection you'll discover, little or no difference, between the Letting Money or a Horse. A Horse is let to be restor'd the same, not absolutely, but conditionally, for if by the Hirers fault it dies, he's only oblig'd, to make amends, to its full Worth. And tho' the same be not return'd, yet it cannot be deny'd that it was Lett. The like happens in Putting out Money; the Letter retains a Right either to the same, or as much; for the Nature and Intention of Hirage, is to have a Horse proper for the Turn; the being This, or that, is wholly indifferent; by reason it is the Species, or Quality, which render things Valuable and Serviceable for Hirage, and not the individuality.

In like manner the Letter being insured of having back a Horse, in all respects as good as his own, ought to content himself as well, as with the Right he has to his own. And what if one should Lett a Horse, Conditioning to have as good, if not his own back; I inquire, whether this would not be a true Letting? Certainly it would. Why may not one
then;

ther, in the same manner Put out Mony? For the Letter keeps a Right to have his Summ back, and one 20 l. in Moral estimation, is the same with another 20. So that the Summ remains still the Creditor's to be restored, as a Horse to the Lettor.

This seems to have been acknowledged by the Learned *Cajetan*, *Verbo Usura exterior* §. Nov. fol. 578. *Nota 2do quod quia Lucrum Usurarium est ex mutuo, ideo si quis non mutuat sed accommodat seu locat, aut Vendit Pecuniam cum pacto recipendi aliquid Plus, non est Usure, sed liciti sunt hujusmodi contractusque dum modo Pacta sint moderata juxta qualitatem Temporis.* Since Usurious Gain is for Lending, therefore if a Person doth not Lend, but Lett, or Sells Mony, Bargaining for somewhat more, it is no Usury, but such Contracts are lawful, so they be moderate, according to the quality of Times. Now our Law has struck up a Bargain for all, to the easing each Particulars of that Trouble; It hath also Provided against all immoderate Gain, assigning a Set Interest now more, and now less, Proportion'd to the Condition

of Times, to the exclusion of all Exactions, and Extortions. and thus the Law renders the Putting out Mony, no Lending, and the Interest allow'd, no Usury.

Whereby the way, I take notice of a Construction in Common Law, which Sir Robert teaches us, of the Word *Extortion* and *Exaction*. They are thus Distinguished, says He : *Extortion is a Wrong, in taking more than is due. Exaction is the taking of what is not due at all.* This distinction, had it come from a School Divine, would scarce have escaped Sir Robert's Censure, he's so severe upon them; for my part, I should conceive, *that the more that is due, is not due at all*; He then who takes more than is due, in that more he takes, takes what's not due at all; and so *Extortion* in Substance, falls in with *Exaction*. The Digression may serve at least, for the Promiscuous use, with Sir Robert's leave, of the Words *Extortion* and *Exaction* without Cavil, upon a Nicety scarce worth the Laws Notice.

C H A P. VII.

Of the Obligation of Lending.

ON what has been said in the Preceding Chapter, an enquiry attends by Course, concerning the Obligation of Lending, it being Manifest, that where the Obligation of giving or lending Money ceases, it may be Lett. To Assigne the bounds of this Obligation.

First. I reduce Dealings relating to Exchange of Property, either to Donation, or Sale, in Contracts reducible to Buying and Selling, a just Profit is allow'd of, Acts appertaining to Donation, as such admit of no Gain, by way of Justice; for such a Gain were Usury in taking Interest, for what Donation, has made no more ones Own.

Now *Lending*, is as sort of Giving, as *Letting*, is of Selling, and one, and the same thing, may be Lett or Lent, or Given; Giving makes the Thing no more the Donors, Lending makes a Thing, or at least,

the use of a Thing, no more the Lender's. For the space of the time 'tis Lent, so that, to require Payment for what is given or *Lent*, as being another's, is Palpable Injustice, and Usury, as has already been declar'd. In *Letting*, one Sells the use of what he Letts.

I Secondly Reflect, that as no man is Oblig'd to Prejudice himself, so where Self-prejudice Intrudes not it self, the Law of Nature Obliges one Man to help another, the Preservation of each, having a Reference to the Whole; and in this Case, arises an Obligation, of Supplying our Neighbours.

Thirdly. In extreme Necessity, no place for *Lending*. The Necessitous having a Natural Right, to take what may relieve their present Want, all things in that occasion becoming Common, and to Refuse a Person, in extreme Necessity, is a sort of Theft, in retaining from him, what Necessity makes to be his own, and no less Folly, in pretending to Lend, what in extreme Necessity is more another's, than yours.

Fourthly. In Cases of great, tho' less urgent Necessity, than Extreme; the
Wealth

Wealthy are bound, under Mortal sin, to Succour the Poor, out of what they have Superfluous ; in ordinary Necessities, they'r Oblig'd under Venial ; Yet in those Cases, if *Letting* or *Lending*, will suffice their occasions, all Obligation of giving ceases : This is generally the Doctrine of Divines.

Hence this Conclusion follows. *The Obligation of Lending is Conditional. Thus to be express'd. If a Person, will not by giving, by Selling, or Letting ; cannot relieve his poor Neighbour, by the Law of Nature, He's bound to Lend out of what He abounds with. And in that Case to exact Interest, is Usury unjustifiable, by any Law whatsoever. The saying of St. Basil being most true, upon the Text of the 14 Psal. Qui Pecuniam suam non dedit ad Usuram. He that hath not given his Mony to Usury. Enim vero inhumanitas est maxima, Si is qui egestate premitur, mutuum ad Vitæ Subsidium quierat ; Dans vero minime contentus, ex Miseri calamitate Provertus & opes excogitet. For certainly, says the Saint : It is the greatest inhumanity, whilst one Borrows a Subsidy for life, the Lender not content with the Principal, Devises In-*

comes, and Riches, out of the Calamity, of one in Misery. In this Passage you have, in what, according to the Sense of St. Basil, *Usury consist.*

In other Cases, containing no Obligation of Lending, Money may be Lett, or Put out, as Law and Custom allows. Since the Obligation of Lending, generally speaking, extends no farther, than to small Sums, sufficient to Relieve Pressing Necessity. Yet in case a Person freely Lends never so great a Sum, the Law cannot allow him Consideration for it; for This were Usury, as hath been more than once repeated, and Prov'd, forbidden by the Law of Nature, and God; to which Inferior Laws, to be Laws, must Conform.

Having prov'd what Occurr'd unto me, not so expressly Treated of in Schools, towards the making out the Lawfulness of taking Interest, for Money Put out; 'tis time I should produce, the Common Titles, Assign'd by Divines, for the Justification of it.

CHAP. VIII.

The Common Title assign'd by,
D I V I N E S.

COnsidering the Nature of Things, which may be Lett, I find in none, so many, and so good Titles, for just Gain, as in the Letting of Mony. A Houïe for Instance, stands Empty, of no Profit, or present use, to the Owner, apt to decay, for want of Inhabiting; yet it may be Lett, and Rent received for it. Upon what Score? For the living in it? But that kept it in Repair; And is it Just, the Inhabitant should pay for what he betters? It may be said, it is the Tenant's Conveniency, which deserves the Rent. The same with greater Reason, may it not be said of Mony?

But besides the Hirers Convenience, the inconveniencies which attend the Lettor, are yet more Considerable, by Reason, Mony being the Price of Things, Contingencies Daily, Produce occasions of
Lacre

Lucre, and the want of it, unforeseen Damage. The depriving oneself of the Profit, which probably might be made, and the Danger of undergoing Prejudices, are rateable, worth Recompence, and may be Bargain'd for, Reason dictating as Just, to provide for Self indemnity. For which Cause, as I suppose, the Mony taken upon those Accounts, is named *Interest*; as behoving each one, to require it as Due.

One may interpose: These Titles have no Place in such as Hoard and Keep Mony idle in their Coffers.

A. An inconsiderate Objection. Whilst the Mony lies in Coffers, the Difficulty may be shut up with it. But every one hath Right to open his Coffers and to make Use of his Mony, to his best Advantage; and this Right by Putting it out, he makes it over to another. Besides in good *Philosophy*, Mony being a pure *Medium*, it is not coveted and lov'd for its own sake, but for the Service it may be put to; as advantageous Purchases, Traffick, and the like, in order to Profit; and in Cases of Suits, Sickneses, Imprisonments, and other too frequent Accidents, in order to prevent the harm, the Want of Mony

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ny in like Misfortunes, would Occasion ; of these Services he that puts out Mony, deprives himself, and that Deprivation deserves to be consider'd. Upon this ground runs the Decision of *S. Thomas, Opusc. de Usuris*, where treating of such as sell dearer, because upon Trust, affirms 'tis Usury. *Si tantum propter expectationem solutionis fiat* ; That is, if it be for meer forbearance, but if it be to keep himself harmless, that it neither may be Usury nor Injustice. But grant that neither Cessation of Profit, nor Emergent Damage, be in the Case.

Still the *Hazard of Principal* is Constant and great. What a multiplicity of false Dealers? Casualties frustrate the best Intentions, Securities of soundest Appearance, prove often Litigious, producing much Cost, Trouble and Care; the exposing ones self to all this, Is it not estimable and worth its Value?

It may be said: All Lenders are expos'd to these Inconveniencies, for which cause, they being essentially connex'd with Lending, either Use-Mony, upon such Titles, as being for Lending is Usury ; or those Titles, taking away the
Nature

Nature of Lending, Usury will become a meer Sound, and not a Word, as signifying nothing.

Ans. It is granted that all Lenders, are more or less Subject to those Inconveniencies, but 'tis deny'd that they are Essential to Lending. For Lending includes no more than the Act of *Lending*, the *Use* of what's Lent, and *futurity* of Repayment; these possibly may consist without loss of Gain, adventitious Damage, or Hazard of Principal, as a Lender presumes they will, and ventures it. So that he retains no Title for Interest; This an Usurer heeds not, but blinded by Avarice, even in that Case will have Profit, with the Principal. A lender then, tho' he be expos'd to Loss, it is because he will lend, be it for Motives of Charity, so commended in Holy Writ, and he is to expect his Interest from God; or be it out of Friendship, and he's repaid by his own Judgment, that it becomes him so to do. But it were a bad illusion to say: he could not Bargain upon the score of those Dangers, and so doing, he had been no more a Lender, and therefore no Usurer.

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The Inference which was added, that Usury will become a meer Sound, and not so much as a significant Term, ends in Air; and is of no Substance. Sir *Roger Twisden*, and some others, make Usury a pure Invention of Churchmen, to bring more Grist to their Mills, which were it true, they would not study to bring it to nothing, as the Objection Pretends. But Divines according to Duty, distinguish no Usury from Usury. To exact Interest for what was freely Lent still remains Usury, independently of all Churchmen and Canons. To Lett where oblig'd to Lend, is Usury; taking above what Law allows, is Usury, at least Presumptive; Continuation Mony, too much in Practice, if some new Consideration arise not, I hold to be Rank Usury, as receiv'd Purely for *Lending*; all other Titles, being satisfied with the Interest, Taxed by Law.

Some not over-vers'd in these Matters, may require what I mean by Continuation-Mony?

Answer. I mean too frequent a Practice of Usurers, their Custom is ever to have Mony at hand, to Supply such as shall

shall Address unto them, *First*, They require so much for Procuring the Money, then they Prefix a Set Time, for which they Lett it. *Finally*, The Term expir'd, they Demand what they think fit, for Continuing it in the Borrower's Hands. This Last I stile Continuation Money, and hold to be plain *Usury*.

Against these Titles from the Name of *Usury*, *Du Tertre* discourages it after this Manner. A name is taken from the Nature of the Thing 'tis plac'd for, but the Name which is given to *Usury*, is for taking Increase, for the Use of Money; therefore *Usury* consists precisely in taking the said Interest. He promotes it thus: General *Idea's* imprinted in the Minds of all Men, cannot be false but *Usury* in the *Idea* of Scripture, Fathers, Philosophers, imports Interest for the Use of Money, without Exception of emergent Damage, loss of Gain, or danger of Principle; To receive Interest therefore for the Use of Money, even with those Exceptions, is *Usury*.

Ans^w. I pass by the Major of his first Syllogism, tho' it be false, that Names be taken from the Nature of things, except

cept the Names given by *Adam* ; for the same thing in different Languages, is express'd by different Names, made significant by the Will of Men. The Minor is deny'd ; for one that buys Cheap, receives Interest for the *Use* of his Mony, and yet incurs no guilt of *Usury*. The Consequence therefore is no better than the Premises.

To the Promotion of his Argument, the Major is granted, the Minor deny'd, and so is the Consequence ; His Major I Reassume and Retort it. General Idea's, *Pag. 114.* imprinted in the Minds of all Men, cannot be false ; but it is an Idea drawn out in the Minds of all Men, by the Author of Nature, that Man may provide against emergent Damage, loss of Gain, and danger of Principal, that he may submit to the Agreement of his Nation, tending to the Common good, therefore its Contradictory must be false.

He instances *Usury* by all is understood, for Interest taken for the Use of Mony. *Usura qua scilicet pro usu Pecunie accipitur.* *Usury* by Reason 'tis taken for the Use of Mony. Says the Law.

Ans. In Law the word *Usura* has both a good and bad Sense; Interest taken for the Use of Mony Lent, is *Usury*; Interest for the Use of Mony upon other Accounts, is no *Usury*. And *de Facto* in his 7th Chap. He justifies several Cases, in which Interest is taken for the Use of Mony. It was a piece of Oscitation in him, not to take Notice of *Usury*, as express'd in other Languages; the *Greek*, the *Hebrew*, and *Chaldaick*, import more than Pure Interest for the Use of Mony, and could not be derived from the Latin *Usus*.

But besides the aforesaid Titles;

This other way, Divines propose for the Justice of Putting out Mony. One may Purchase a Pension, or Rent Charge affecting some Land; or Tenement, and it is stiled *Real*, or affecting only the Person, and 'tis nam'd *Personal*. The Contract is so to be drawn up, that by Repayment of the Principal, the Obligation of giving the Pension, be clear'd; or upon Releasing the Pension, the Principal restor'd, both Parties Covenanting for Performance. As to the *Real*, 'tis judg'd by most Divines to be
no

no ways *Usurious*, by Many, and of great Credit, as to the Personal, Reason being much the same for both; so that excluding all *Usurious* intentions, both Contracts are held safe in Conscience. Our Custom then may be said to involve a general Covenant of this Nature.

Whatever Statute therefore has been Enacted, against taking Interest for Loan, can only be in force, in Cases of unlawful Gain; and we are beholden to Divines, for finding out just ways of attaining to a Profit, which could not be made by *Usury*, without sin. This is ingenuously confess'd by Sir Robert Filmer, tho' no Friend to Catholick Divines. But Reason, is ever Reason, come it from who it will. His words are *Pag. 124.* *It is no Sin to avoid a Statute by Lawful means: If the Contract of Bargain, and Sale be in it self Lawful, why should it be a Vice, and not a Vertue, thereby to avoid the Penalty of the Law, since Laws are properly made, to force Men to avoid them, by Lawful means?*

C H A P. IX.

Whether in some Case, it stand with Law, and Conscience, to take More than Five per. C E N T.

THe ordinary Method of Putting out Mony, having been discharg'd of the Imputation of *Usury*; a Motion may be made, whether in some Case, one may not improve his Mony, to more than the Current Interest? That one may do it, by way of Traffick is unquestionable. So that any means of Gaining, more than Five *per Cent.* justifiable, by the same Reasons, and Law, as Traffick is, cannot but be Approv'd of, even in Putting out of Mony.

My Conclusion is that, *in some Case, the Gain of more then Five per Cent. is Lawful.*

The Case is of a Triple Contract, taught by most and ablest Divines. The first is a Contract of *Partnership*. The second

cond of *Insuring* the Principal. The Third of *Insuring* the Interest, all three Maintain'd by Law, and Practis'd upon Exchanges, which certainly they would not be, were they against the Law of Nature and Usurious.

Suppose then, that all Succeeding according to Expectation, by the first Contract, each Partie's Gain in a Year, be Computed *Thirty per Cent*; Suppose by the second, a Partner Insure his Principal, by giving *Ten per Cent*. Suppose finally, that by a third, He seu for Ten more, the hopes he has of Gaining Twenty; for hope of Gain is Valuable, and matter of Purchase, as appears in the Buying the Cast of a Nett. Thus Acting, the said Partner, will have Right, to *Ten per Cent*. and the Conclusion is made good.

In *Sevil*, as I am inform'd, no less than *Twelve per Cent*. is taken and given by Merchants, and *Du Tertre* acknowledges, that Merchants of the Town-house, of *Paris*, and Exchange of *Lyons*, pay each Term, which is Quarterly, two and a half, Amounting to *Ten per Cent*. in a Year. And questioning himself, what may be said to it? He coldly Answers *que pour L.ordinaire*

et Interest est Usuraire. That for most part, such Interest is Usurious. So that of its own Nature, it is not, for were it, of its own Nature, Usurious, it would always be so, and not only ordinarily. But to return.

Divines agree in the Lawfulness of the Triple Contract, so it be made, with distinct Persons, and not with a Partner. Some modern *Rigorists*, except against it when made with the same. Their Reason is, that the Nature of the Contract of Society, is to be such, that both Loss, and Profit, be equal to all Parties. *L. 1. & Seq. π. & leg. 1. & Seq. c. pro socio.* But the two latter Contracts excludes, partaking in the Loss, therefore not to be made with a Partner.

Ans. w. At least the Point is gained, of its Lawfulness in some Case, of making more than Five *per Cent.* To the difficulty of Contracting with the same Partner, Divines answer, That by the Law 'tis only evinc'd, that in Vertue of the sole Contract of Society, one cannot require from a Partner, to be insured, but that it is no ways against the improving the said Contract, by Addition of the two others.

I add, That the Person so contracting in Law, is not the same, but in this Case, as in others, is equivalent to three, *per fictionem Juris*, as the Civilians term it. In the First, he acts as a Partner, in the Second, as an Insurer of the Principal, in the Third, as a Purchaser of the Hope of Gain, which the Partner Sells him; so that in each he acts, as a several Person; and why may not all this be perform'd by a Partner, as well as another? Since Partnership, rather gives him the Preference, to the Gain in Prospect?

Against this, *Du Tertre* urges the Bull of *Sixtus Quintus's* Beginning. *Detestabilis Avaritia*, where he condemns the Contracts of Society, in which the loss of Principal remains not in him, who Puts out his Mony, but is to be restor'd him with Interest, in Case it Perish in the Partner's hands, without any Profit accruing to him.

Ans. First in that Bull, such Contracts only are condemned, wherein by the sole Contract of Society, or Covenants by Constraint involved in it, the whole Danger of Principal, without any Consideration, is cast upon a Fellow-

Partners, without any Contract of Insuring, freely made, and agreed to by both Parties, which *Jure Communi* hold good. See *Bonac. Disp.* 394. *Puncto Unico.* n. 46. citing many as *Molina, Salon, Nav. &c.* and *F. Tuccius*, a Man of known Sanctity and Learning, in his Letter to *Comitolus*, witnesses plainly, that *Sixtus Quintus*, being ask'd concerning this Bull, answer'd; That he only forbid the Conventions usually joyn'd to the Contract of Partnership, which are commonly condemn'd by Classical Authors, not such as they thought just; And this *Tuccius* had from the *Cardinals, Toletus*, and *Sanclorius*, who were Commissioned to draw up that Prohibition.

Secondly, The Bull is of no force, where not receiv'd, as the same *Bonac* observes, nor is it Accepted in *Germany, France, Sicily, or Flanders.* *Less. lib. 2. de Just. cap. 23. Dub. 13.* and *England* may be added. But whether receiv'd or no, 'tis decided by the *Rota* in *Farinaecius Decis*, 137, and 138. And *Coccinus* a Famous Canonist, Dean of the *Rota*, in a *Rotal Decis*, *An. 1602.* concludes expressly, That the Bull comprehends only
such

such Cases, as are Usurious *Jure Com-*
mani; which Decision you'll find in
Cherubinus, in the Compendium of the
Ballarium, *Scholio primo ad Bullam 45. Sixti*
Quinti.

By these Allegations it appears, with
 how small Consideration, and much want
 of Study, *Du Textre* insists upon that
 Bull. It cannot but be very disagreea-
 ble to Men of Sense and Reading, to
 hear some wordy, shallow Preachers,
 and lesser Divines, condemn these com-
 mon Methods of Palliated Usury. Let
 the best of them uncloak it, by Proving
 that the Gain made in any of the ways
 hitherto Rehears'd, and Authoriz'd by
 the Publick Good; By Civilians, by Ca-
 nonists, and Divines is purely for Lend-
 ing, in which consists the Essence of U-
 sury; or that they are against the Law
 of Nature.

This is to be done to Evidence, for if
 it remains doubtful, Possession carries it
 for Custom and Law. And were it not
 a Tyrannizing over Souls, to send them
 to Hell, more than God himself can do
 without Evidence for Usurers? Whole
 Nations for Practising of it, to Hell;

Divines for Teaching it, to Hell; Lawyers to Hell, for Abetting it, Judges for upholding, to Hell. But Practising what? Teaching what? Abetting what? Upholding what? What only they deem'd an Injury to None; a Convenience to All, suitable to the Law of Nature, and no wise offensive to the Almighty: And for this to Hell? If this be a Zeal! It is a Zeal no better than Injustice. What an embroilment of Consciences? What a confusion of Restitutions to be made by the now Living, for their Ancestors, and for the yet Living, by themselves, could the misapprehension of a few Austere Fancies, without any I Say, not manifest, but even probable Reason, ground an Obligation of believing them? Were I furnished with Monsieur *Du Tertre's* Oratory, How would it pleasure it self, with a breathing or two, upon so fair a Course? But enough, if not too much of what's unnecessary, and with the three following Enquiries, I close this first Part.

C H A P. X.

*Of the Bristol Bargain, Pawn Bro-
cage, and Interest upon Interest.*

First Assertion. *The Bristol-Bargain no Usury.* The Reason is, That the Gain made by it, is not for Lending, but a Real Purchase of an Annuity, to be paid for a set Number of Years. And tho' the Interest by the Seller's Industry, may come to more than Five or Six per Cent. this cannot make It Usury, otherwise the Profit made by Selling and Buying, which in a Year, may exceed 20. would be Usury, to the destruction of Traffick.

Second Assertion. *The Bristol Bargain,* as represented, is both Just and Com-
mendable.

The Bargain as proposed to me some 20 Years ago, is this; Five hundred Pounds then running at Six per Cent. was given for an Annuity of ~~Two~~ hundred

E 4

Pounds

Pounds to be Paid Yearly, the space of Seven Years. I then thought it safe, in Conscience, and still do, the more that I hear, 'tis warranted by Law; For it contains the requisit of Equality between the Price, and what's Bought, so that 'tis guilty of no Injustice; It is not purely for Lending, so that it is free from Usury. 'Tis true, the Purchaser by Putting out the hundred Pounds yearly Paid him in, upon the expiring of Seven Years, Reimburses his Capital, and comes to Gain 330*l.* and somewhat more, but this, without the least Oppression of the Seller, who, I suppose, takes the Principal, in order to make a Purchase, or the Paying a Debt; and not able to pay in the Whole at once, is eased by Paying in yearly, a Hundred, and the last Two hundred, paid in lieu of *Interest*, falls short by Ten of the Current *Interest* at Six *per Cent.* So that albeit the Purchaser may Gain a hundred and Twenty Pounds, above the Current *Interest*, the Seller of the Annuity, gives less by Ten, and by consequence the Bargain is commendable.

Third.

Third Assertion Pawn Brocage, not to be excus'd from Usury.

By *Pawn-Brocage*. I understand not, the taking a Pawn for Security, of ordinary Interest, without Power, of Alienating the said Pawn; But in the Assertion I mean the Practice, of taking more than the usual; and that Monthly, under forfeiture of the Pawn, in Case of Failure. This I take to be *Usury*; my Reasons are.

First, It is expressly against *Law*, so that that the general Agreement, which justifies the Common way, of Putting out Mony, is against *Pawn-Brocage*.

Secondly, The overplus a *Pawn-broker* takes, other Titles being fully Recom-pense'd, is presum'd to be taken purely for Lending.

Thirdly, 'Tis the pressing Necessity of the Poorer sort, which *Pawn-brokers* prey upon, Exacting no less, than Fifteen *per Cent.* and often more, to the great Oppression, of their Poor Brethren, which is the very Notion of Usury, deliver'd in Scripture.

Fourthly. *Pawn-brokers* are so Insured, of their Principal, by Pawn, that the
Title

Title of its Danger, and Trouble in Recovering it, almost wholly Vanishes. But *Emergent Damage*, and *Cessation of Lucre*, still remain.

Answ. Grant they do, which Brokers themselves know best, yet the Danger of Principal, equaling both, and ceasing; either *Pawn-brokers* are bound to take, but half Interest, upon those Considerations, or others may take the Double, for the Danger of the Principal; But this would be Judg'd Extortion. *Pawne-bro- cage* therefore, can be no better.

In favour of *Pawn-Brocage*, Presidents are taken from the *Mounts*, as they are call'd of *Piety*, Erected in most *Catholick Cities*, and approv'd of by the *See Apostolick*, as receiving something more than Current Interest, towards the Maintenance of Ministers and other requisits to that Pious Work.

Answ. The Disparity is great. First its no good Consequence, from Publick to Private Authority, for were it, whatever the Publick Acts, each Particular might Presume to do, to a Confusion of Order, and Justice. For example, vindicative Justice, as incumbent to the Publick, is

2 Vertue, yet no good President, for a private Man, to Revenge himself, This being reserv'd from him, as an Incompetent Judge. It doth not follow then, that *Pawn-brochage* Practis'd by those *Mounts*, and Administred by the Publick, may be put in use, by every Particular, *Avarice* being as dangerous a Passion, and as blind as Revenge.

Secondly. Those *Mounts*, are to take no more than what's precisely Necessary to uphold them, for Relief of the *Poor*, without making the least Gain to themselves. *Pawn-brokers* aim at raising Fortunes.

Thirdly, It ensues that *Pawn-brokers*, are an agrievance to the *Poor*; whereas those *Mounts*, are an ease from the Double, Treble, and more, which by *Jews*, and *Jewish Brokers*, would be Exacted of them; They were named *Mounts* from the Bulk of Mony Levied by the Prince, Magistrat, or Charitable Contributions of *Piety* from the end they were Founded, the Relief of the Poor.

Fourthly. If after a year, which is the space given to redeem the Pawn, the Pawn be Sold, Satisfaction being made for

for Principal and Interest, the Surplus is to be restored to the *Borrower*. How well, this is perform'd, by *Pawn-brokers*; let their Conscience tell. However, according to the Law of Nature, they ought not to be their own Dealers, and take advantage from the Misery of the Poor. For this Reason I apprehend *Leo the 10th.* with the Approbation of the *Lateran Council*, held by his appointment, requires the Confirmation of the See *Apostolick*, to the Erecting the said *Mounts*. On what Authority then can *Pawn-brokers* rely, who not only Act without it, but consequently against it, and our National Laws? So that Reason and Authority duly considered, our Assertion holds.

Fourth, Assertion *Interest upon Interest*, as the words sound declares it self *Usury*, they importing double Interest, for one and the same Principal, which is Exaction.

But the Case may be stated thus, a years Interest for example of Twenty Pound is due. Now in case of *non Payment*, can the Creditor demand new Interest, for what's unpay'd, from the time it was due?

Ans.

Ans^w. If the Creditor at the due time, demands not his Interest, but voluntarily lets it run on, by way of forbearance, he can demand nothing, by reason the forbearance, as being of his own free Will, invests the Nature of a Gift, for which as such, nothing can be required, and so to take Interest, for what still remains Interest, as never having been Converted, into a Principal, would be Usury. But suppose the Creditor, in due time call for his Interest, and by Agreement, with the Debtor, in place of receiving it, Converts it into a Principal. I see no Usury in it, for as he may joyn an other Sum to the former, so he may the Interest; and the Consideration to be had for it, cannot be said to be Interest, upon Interest, but upon what was Interest, and is now become a Principal.

What if the Debtor being call'd upon, refuse to Pay what's due?

Ans^w. The Case is the same. For from the time 'tis Challeng'd, the Debtor is an unjust detainer of what would be a Principal, in the Creditor's hands, and capable of improving; now the loss of the said Improvement, is to be made Good.

Where-

Wherefore the Civil Law distinguishes Usury of pure Gain, for Lending, and Usury of Compensation. The first is ever forbidden, the second is allow'd of (*L. Socium. ff. pro socio.*) Where if a Partner defers to Pay in due time, his fellow Partner, 'tis thus decided: *Usuras quoque prestare debet, sed non quasi Usuras, sed quod socii Interest, Moram eam adhibuisse.* He must also Pay Usury, not as Usury, but because it concerns a Partner, that he should not suffer by Delay, and *L. Usuras Cod. de Usuris. Cogitur Emptor qui in Solutionis Mora est Usuras insuper solvere Venditori.* The Buyer who defers Payment, is to Pay over and above, Interest to the Seller.

Notwithstanding what has been said, if we have any Peculiar Law, against taking Interest for what was Interest; I Think it not safe in Conscience to require it. Law being a Rule of Property and consequently just Gain. And there may be just Reason for the Laws forbidding it. *viz.* to put a Stop to the Ruin of Families which certainly attends such, as either cannot, or neglect to Pay the first Interest. For the burden, of a new Payment coming upon them, will render them less able to Pay the Second.

Having

Having performed, I hope as far as Necessary, the first Part of my Task, in clearing the Putting out Mony at Use, from the foul Scandal of Usury, by confronting it with the Law of Nature, as interpreted by Divines, and Lawyers, I conclude with an Answer to the Complaint of *Du Tertre*: That if Divers by taking up Mony, run themselves into Poverty; others by Putting out, forfeit their Principal, 'tis the fault of Particulars, and no want of Provision in the Law, which by moderating *Interest*, provides for the First against *Extortion*; and allows to the Second, the Security they shall require. Casualties ought not to be Rules, otherwise on the same Account, all Trades must Cease, since a Profession which is one Man's Making, is often the Undoing of another. One by taking up Mony clears his Estate, and prevents great Mischiefs; or Recruits his sinking Trade and Reputation; another Redoubles his Debts; the Fault is not in taking up the Mony, but in the Management.

PART. II.

Of the Case as to Scripture.

CHAP. XI.

USURY Consider'd as to the Old TESTAMENT.

THe Reverence and Compliance due to God's Word in Holy Writ, takes Place of all Reasons and Authorities hitherto made use of; nor can any Human Law, or Custom, tho' seemingly tending to the Publick Welfare be of force, in opposition to Divine Command. For, as *Tertullian* solidly Determines; *Ad exhibitionem operis Prior est Majestas Divina Potestatis, Prior est Auctoritas imperantis, quam utilitas servientis.* The Majesty

Majesty of Divine Power, the Commanding Authority, precedes the Utility of him that serves. It is but Rational therefore, that I should confer what has been said, with those Texts of Scripture, in which Usury is condemn'd.

To the Explaining how far they relate to our Case.

The first Passage is, *Exod. 22. v. 25. Si pecuniam mutuam &c.* If thou lendst Money to any of my people being poor, that dwelleth with thee, thou shalt not urge them, as an Exactor, nor oppress them with Usuries. The Second is *Levit. cap. 25. v. 35. Si attenuatus, &c.* If thy Brother be impoverished and weak of hand, and thou receivest him as a Stranger, and sojourner, and he live with thee, take no Usury. And *Ver. 27.* Thou shalt not give him thy Money to Usury, and an overplus of the Fruits, thou shalt not exact of him. The third is *Deut. c. 23. v. 19. Non feneraberis Fratri tuo, &c.* Thou shalt not lend to thy Brother Money to Usury, nor Corn, nor any other thing, but to a Stranger. This is whatever Moises has left in his Law touching Usury.

The two first places are but an Explanation of the Law of Nature, both Conditional, and no absolute Command. The Condition is, *If thou Lend*, which implies not so much as a Precept of Lending. But that's not all; the Condition requir'd to the guilt of Usury, as the Words lie, is not meerly of Lending, but lending *to the Poor, and weak of hand, viz. not able to work*; From them to take more than was Lent, is Oppression; Prohibited under the Notion, *Thou shalt not oppress them.*

To the Poor, little suffices for their present Wants, and to require sole Repayment of them, is more, than to take Interest for greater Sums from the Sufficient. The Law therefore aims not the least at the Case we are in; for who puts out Money to *Poor and weak of hand*? Few or None. And yet the Law condemns only such of inhumanity as do, by stiling this *Usury*; *Neshec, a Ravenous bite, or the bite of a Dog.* A name perfectly misbecoming the Practice of Putting out Money, Profitable to all Parties concern'd. And no wonder if *Usury*, as express'd in Law, grounded
so

so just a Detestation of it in holy Fathers, moving them to so frequent, and vehement invectives against it. The Plainness of the Expression in the Law, has encourag'd some to fix all Usury upon the Oppression of the Poor, and would incline me to do the same, did not Evidence of Reason, the Light and Law of Nature, extends its Notion yet farther, to a *Gain* made purely for *Lending*.

The third place in *Deuteronomy*, tho' somewhat varying in Words, contains no more than the former. This I make out; First, from the Title, Occasion, and scope of the Book. Secondly, from the Text it self.

The Title of the Book given by the *Rabbins*, is *Misne*, a Reiteration of the Law, and by the *Septuagint*, *Deuteronomium*, Signifying a Second Law; not as different from the former, Publish'd on Mount *Sina*; but as being a Repetition of it. See *Theodoret. q. 1. in*

Deut. S. Austine. q. 49. S. In Prologo Athanasius, in Synopsi. S. Jerogo Galeato. rome words it thus; *Deuteronomium 2da Lex, & Evangelica Legis prefiguratio, nonne sic habet ea qua prima sunt,*

ut tamen nova sint omnia de Veteribus? Deuteronomy Prefiguring the Evangelical Law, hath it not the first things after such a manner, that of Old, they seem new? And this by Reason of the Different and statelier Tone, *Moses* takes in this Book; When after 40 Years Travel, and glorious Atchievements, being upon his Departure for a better Life. He, to a new People, their Progenitors being deceased, makes a second Promulgation of the Law, but more Emphatically, to ratify the Covenant between God and that People. By the Title therefore of the Book, it's Occasion and Intent, the Law written in it, in Substance, varies nothing from it self, given in the former.

This 2dly, is made out from the Text it self. For the Negative, *Thou shalt not Lend to Usury*, is no more than equivalent to the Conditional. *If thou Lend, thou shalt not take Usury*. And so 'tis coincident with the former. Whether this Law were only *Judicial*, as the Knights will have it, proper to the *Jews*, or *Moral*, extending it self to all Mankind; I examin not, but supposing it Moral,
yet

yet it nothing affects the Case of Putting out Money, without Oppression, or Injury.

The Law thus expounded, affords us in few words, a general and true Construction to the many and vehement Expressions of the Prophets against *Usury*. For the Prophets, tho' inspir'd to be the Preachers, and Interpreters of the Law, yet they were no Givers of a new Law; Wherefore our Saviour, *Mat. 22.* puts a distinction between the *Law* and the *Prophets*; *Usury* therefore with them, must signify no more than what is written in the words of the Law. According to these, *S. Basil* glosses the 5th Verse of the 14th Psalm. And *David* in the 71 Psalm Verse 13. by the words, *He shall spare the Poor and Needy*, gives us the Sense of the following Verse. *From Usury and Iniquity, he shall redeem their Souls*; As Psalm 54. he joins *Usury* with *Guile*.

Neither doth the Place in *Ezek. c. 18.* much Exaggerated to little purpose by *du Tertre*, express any thing, not Mentioned in the Law, for that *more or increase* there mention'd, and in other Places, is the same specified in the Law, for *Usury*, forbidden under the Proper Name of *Neshec*.

And the milder of *Tarbit* or *Increase*, given it by the *Jews*, as was Remark'd in the 2d. *Chapter*. An honest *Increase*, and upon just Considerations, is no where blamed.

Christ indeed, to whom all Power was given, in Heaven and Earth, abrogating the Ceremonial Law, and some Judicial of the Old Testament, might have Established, a Peculiar as to the present Case, But his Divine Wisdom, left things, as to that Point in the state they were; Declaring only when questioned, by a Sawcy Doctor, *Matt. 23.* That on Charity, *the whole Law depended, and the Prophets*. So that if the Putting out Mony, be no Aggrievance, by consequence not against Charity; As to *Law, and Prophets* it rests Good.

C H A P. XII.

U S U R Y Consider'd, as to the New
T E S T A M E N T.

THe single Text, making to the present Purpose, is *Luke c. 6. v. 35. mutuum date nihil inde sperantes. Lend, hoping nothing thereby.* This passage, however so much Insisted upon, gives little Assistance to such as are Averse to the Putting out Money at use. Our Saviour in that Chapter Intermixing many things of Counsel, with others of Precept; Be pleas'd to peruse it. This saying, Divines hold to be only of Counsel, and the Conjunction of Lending, with other Works, which are not of Precept, Is no feeble Confirmation of it. *Vers 29. 'Tis said: Unto him that smiteth thee on the one cheek, offer also the other. And verse 30. Give to every man that asketh.* This lays no Obligation of Giving; no more doth the first of Lending.

Besides Reason dictates the Proposition
to

to be capable of Restriction; For tho' a Lender, be bound to hope no Increase by Lending, he may hope for a Requital of Gratitude, Friendship, or a like return; This indeed as being of less Perfection, than to hope it from God, we are Counsell'd to abstain from, by hoping *nothing* from Man. Otherwise, why might not the unnam'd Contract, *Do ut Des. I give to be given to,* as well hold Good, being Authoris'd by *Christ* in the same Chapter if words be taken as Writen; *Give; and it shall be given to you?*

But no need of all this. The particle *thereby* Moderates and restrains the Negative *nothing*; So that the words of *Christ*, as I Apprehend, contains both *Counsel* and *Precept*, *Counsels* in the Affirmative part; *Lend*, out of the Case of Necessity; in Case of Necessity; *Precept*, and *Prohibition* in the *Negative* part, hoping *nothing thereby*, viz. *for Lending*.

Three other Places, in the New Testament, present themselves. The first, *Mat. 25.v. 27.* in the Parable of the Talents. *Thou oughtst therefore,* says the Lord, *to the Idle Servant, to have put my Mony to the Bankers, and then at my coming, I should have*

have receiv'd mine own, with Usury. The second is, *Luke* the 19. v. 23. Where the Noble Man, to the same Purpose utters himself. *Wherefore then gav'st not thou my Mony into the Banks, that at my coming, I might have required mine own with Usury?*

My intent go's no farther than to shew by these Parables, How the putting out Mony at Use, was Customary among the *Jews*; a Parable being: *The application of a well known thing*, as the Putting out Mony was; to *alefs known*, as the Kingdom of Heaven. The Parable moreover represents unto us a twofold Gain: the one of Trade, the other by Putting out Mony at Use. The omission of this, as obvious and of less Trouble, as also less Profit, is reproached to the idle Servant; Usury in that place, being taken in a good Sense, as Interpreters observe. It having then been a Custom of the *Jews*, to put out Mony, had it been Usury so to do, expressly against Law; Christ so Zealous in the reform of other Disorders, had never passed so great an one in silence.

The third place, *Matth.* the 21th, and *Jo.* the 2. relating the Execution done by our Saviour upon the *Bankers* in the Temple

Temple, has scarce a shadow of Difficulty; that Comportment of his, having proceeded from the abhorrence not of Usury, but of the *Profanation* of the *Temple*, as appears from his Words; *Make not the House of my Father, a House of Trading.*

St. Paul in his first to the *Corinthians*, Chap. 6. in the Number of the excluded from the Kingdom of Heaven, specifies *Thieves* and *Avaricious*, but makes no mention of the Putters out of Money; the true Son of Usury being comprehended in *Theft* and *Avarice*. For Avarice is the Parent of Extortion, Fraud, and other unlawful Dealings, and therefore *Extortioners* are nam'd there. For such is the violence of *Avarice*, where it reigns, that it murders all thoughts of Charity, and breeds such a Passion for Lucre, that it catches at all Means, Just, or Unjust; and one of its proper Effects, questionless is Usury. A Disposition of this Nature, constitutes an habitual Usurer, its Execution, and Actual.

More than this is not to be cull'd out of Scripture, as to the true Conception of Usury, so frequently, and severely reprov'd

reprov'd by Holy Fathers; Out of whom Monsieur *Du Tertre* has handed the choicest places to me. Wherefore, my next work is, to give them their true Construction, that by Mistake, they may not work upon the Weaker.

ART. III.

Of the Case, as to Church.

TESTIMONIES of Fathers,
Councils, and Popes, Answer'd.

CHAP. XIII.

CITATIONS of the Latin Fathers.

AS beyond all Doubt, Holy Fathers were given to the Church for Interpreters of the Divine Law, and true Sense of Scripture; so the Practice of
the

the Church interprets them; and is to be their final Rule, and Judge, as well as ours. Some things are spoken by them Orator like, others Dogmatically. Dictates of the first Nature, are no ways Obligatory; Sayings of the Second are yet no farther binding than the Church accepts of them. I say not this, that I meet with any one Quotation, that condemns the Common Practice, but only to give a true Account, how far their Authority reaches. They generally run down Usury, *viz.* Either taking Interest for Lending, or Extortion. And he that puts out his Mony at Reasonable Rate, cannot be said to receive meerly for Lending, or to Extort.

A regard also is to be had, to the Times and Circumstances, in which they Writ; Mony then Running at *Cent. per Cent.* and Heathenish Customs, of Exacting upon the Poor, still being in Vogue. These Reasons might influence their Zeal. and give Fire to their Vehement expressions; and tho' a chief respect; is to be had, to the Primitive Doctors of the Church, yet we are not to lose the Esteem, due to those who according to the Apostle, God has plac'd

plac'd in his Church, from time to time, to Succeed them; nor ought they to be Slighted, with the Lessening Character, of a few Casuists, as *du Tertre* makes bold to do. The Casuists, are Devines, neither a few, but the greatest Part, and the Learnedst, on which we ground our selves, as to the Case.

The Holy Father, most quoted, is St. *Amb.* in his Book upon *Tobias*. The Title of his 14 Chap. is *de Usura Divina Lege Prohibita*, Of Usury forbidden by the Divine Law.. There he thus defines. *Quod cunque sorti accedit, Usura est, quod velis ei nomen imponas.* Whatever accrues to the Principal, is Usury, call it as you Please; and in the following Chapter Expounding that Passage of *Deut. Non Feneraberis Fratri tuo sed Alieno.* Thou shalt not Lend Money for Usury to thy Brother, but to the Stranger, *Quis erat*, says he; *Tunc Aliene-gena, nisi Amalec, nisi Amorrrheus, nisi Hostis? Ibi Usuram exige, cui merito nocere desideras, cui jure inferuntur Arma huic Legitime indicantur Usura.*—*Ab hoc Usuram exige, quem non sit Crimen occidere.*—*Ubi Jus belli, ibi etiam Jus Usura.* Who was then the Stranger, but Amalec, but the Amorrrheans,
but

but an Enemy? From him who justly thou desires to Harm, Exact Usury---Take Usury from him, who it is not a Crime to Kill---Where there is Right to War, There, there is Right to Usury. So far St Amb. after his Eloquent Manner, in a Transport of Zeal; For these words of his, contain much Matter of Dispute; As for example; He restrains the Word *Stranger*, to sole Enemies, which Argues not so strict a Discourse. Nor do any as I know hold it Lawful to take Usury from an Enemy. But to Examine each Particular of the Passage.

The First, whatever accrues to the Principal is Usury. Must either be understood with St. Basil, of an Increase, Extorted upon the Poor, or as Divines commonly do of an Increase, meerly for Lending. Wherefore Lancelot, by *du Terte*, so Highly Commended. Lib. 4. of his Institutions. *Titulo Sept. de Usuris*. Thus defines Usury. *Usura est quidquid ultra sortem mutuam percipitur*. Whatever is receiv'd above the Principal Lent, is Usury. Now that this must be the Meaning of the Saint. I Prove it from the Title of the Chap. which is of Usury, &c. But no

Usury

Usury but in one of those two ways; therefore the *Increase* the *Saint* speaks of, must be in one of the said ways. If the Place be not thus Expounded, it fails of Truth. A free acknowledgement, made by the Borrowers, accrue to the Principal, is it Usury? And tho' in the Banks of *Rome*, it be not in the power of him that Puts out his Mony, to call it in at Pleasure; yet it lying safe, and the Principal remaining still his, The Interest accrues to the Principal; and will any one Presume to condemn the said *Mouns* of Usury?

The second Place; may be retorted against the Alledger. The Usury *S. Amb.* speaks of, is Parallel'd to *Killing*, consequently to the greatest Blow, to be given by an Enemy; such may be heavy Extortion, and Oppression of the Poor, or a Treacherous Exacting Interest, for what was Lent; but nothing of this, in our Case, Sustained by mutual Conveniency. Suppose the *Amalecites* or *Amorrhæans*, had made some Constitution amongst them, of giving Five or Six per Cent. for the Benefit of Trade, and ease of the Indebted, who otherwise, would be exposed to much greater Damages, and for other ends tending

ing to the Publick Good; would the Jews, by placing Moneys in their Hands, have made a Bloody War upon them? Would they have put them to Slaughter? Would they in the least have injured them? Surely no. It is violent then, to inforce those sayings upon the Case before us.

To S. Amb. Succeeds S. Jerom, in his Commentaries on the 18 Chap. of *Ezekiel*, where having declared, That Usury is not only for Money, but also for other Consumptible Goods; he exemplifies it in Seed time, in Corn; in which occasion, one lends ten Bushels, to receive 15 at Harvest, and this by way of Charity. The Saint thus insults their Usurious Hypocrisy. *Respondeat enim nobis breviter, Fenerator Misericors; utrum habenti dederit, an non habenti? Si habenti utique dare non deberat, sed dedit quasi non habenti, ergo quare plus exigit, quasi ab habente?* Let the Merciful Usurer, answer us in short, whether he gave to one, that has, or to one that has not? If to one that has, he ought not to have given it, if to him that has not, Why exacts he more from him, as from one that has?

St. Jerom's Ironical Challenge, given to an Usurer, reflects not upon the Putting out Money, as is clear. By one that *has*, and one that *has not*, he means Rich and Poor; as to Rich, no Occasion for Lending, as to Poor, they ought not to be treated as Rich; This is the whole strength of the *Dilemma*, which seems rather to allow taking Interest of the Rich, and not of the Poor; for could Interest be receiv'd from neither; How would that Instance hold good? Or *why exacts he more from him, that has not, as if he were one that has?* It also deserves reflection; that the more exacted of the Poor, was no less than 50 per. Cent. or by such as thought themselves most just, as the Saint expresses it, 25. And this for Corn, which could have render'd its owner, who had it to spare, no more, than the Market Price; whereas Money, is highly improvable. Let some of our Country Usurers therefore, answer the 2d Part. With what Conscience, do you exact the more, for what you lend, and that only from Seed-Time, to Harvest of 50 or 25 per. Cent. from the Poor?

Again by the word *Giving*, he may mean *Lending*; This being a sort of Gift, and then St. *Jerome* instances well, he ought not to have Lent, to one that has since the obligation of *Lending*, is grounded upon our Neighbour's Necessity. And what doth this concern us? For tho' there be no Occasion of *Lending*, there may be just Cause of *Putting out Money*, and placing it with such as think it but Reasonable to pay the Lawful Interest.

The 3^d is S. *Austine*, upon the 36 Ps. Conc. 3. He writes in this Manner. *Si fa-eneraveris homini id est Mutuam Pecuniam dederis, &c.* If you lend Money to a Man, from whom you hope to receive Increase, or more, than you gave him, be it Corn, Oil, &c. You are an Usurer, to be disapprov'd, and not Prais'd: Mark what the Usurer does, *He will give less, to receive more.*

A. S. *Austine* plainly tells us, what Usury is, and only confirms the Common Definition; Usury, says he, is a Will of giving less to receive more; And that you may not mistake, what he means by *Giving*, it is *Lending*, as the Preceding words make out. *If you Lend a Man*, By S. *Austin* then

then is defin'd an Usurer, who for Lending will have more, than he lent. And he who gainsays this, knows not the nature of Usury.

These are the three Doctors, Monsieur *Du Tertre*, thought fit to select from among the *Latins*, out of which a Place or two more, I have omitted for brevity sake, as having their Answer in what has been said.

C H A P. XIV.

AUTHORITIES of Greek Fathers, Answer'd.

TO the three *Latins*, are join'd three of the *Greek Church*, by *Du Tertre*, concluding in *S. Austin's* words; *Quomodo Verba Scriptura intellexerunt Sancti, sic utique intelligenda sunt. Words of Scripture are to be understood, as the Saints understood them.* By *Saints*, *S. Augustine*, without doubt means the unanimous consent of *Fathers*, and not a few dubious *Sentences*.

I begin with the Author of the imperfect Work, *Hom. 38.* upon *S. Matthew*; Tho' cited last, as Arguing closer than the other Two. To reflect upon the Author's Guilt of Hereſie in ſome Paſſages, I take to be little to the Purpoſe; but I weigh his Reason. He enlarges himſelf, upon the Difference between Letting of Lands, and Letting of Mony. Firſt. *Quoniam Pecunia, non ad aliquem Uſum diſpoſita eſt, &c.* Mony is not order'd to any Uſe, as a Field, but only to be the Price of Things, in Buying and Selling. Secondly, He that Hires a Piece of Land, or Houſe, has the Fruits of the Land, or Conveniency of Lodging; ſo that it is an Exchange of Gain for Gain. But if you retain your Mony, it fruits you nothing. Thirdly, Lands or Houſes decay with Uſe, Mony when 'tis Lent neither Diminiſhes, nor Deteriorates.

Anſw. Authority ground'd upon Reason, go's no farther than the Ground it builds upon; Wherefore, anſwering Reason, I ſatisfy Authority. To the firſt 'tis granted, That the Uſe of Mony, and a Field, much differ. Mony of itſelf

self produces nothing; a Field of its own Nature is fruitful; The Use of Money, is to be the Price of things; the Use of a Field is not; yet in this they agree; That as a Field gives Grass, or Corn by Tillage, so Money employed in Buying, or Selling, yields Profit, and of the Right to this, he that Puts out Money deprives himself. I further wish the Opposers would acquaint me with the Products of a House, and other Artificial things, or even of Money, when Lett out only for Show, or to be a Pledge; as on those Accounts, S. Tho. allows it may be. 2da. 2da. Qu. 78.

To the 2d. He that Hires Money, has the Profit, or at least the Right to Profit by it; and so makes an Exchange of Gain for Gain. But Money by Keeping, affords nothing.

What then? But it would by Spending. And before Spending, doth it not enable the Owner to profit by it, as Occasion serves? And is this Nothing? Hath it not more of Hardship, that another should have the whole Gain by Laying out ones Money, than the Owner should take part with him?

To the 3d. That House and Land decay with

with use 'tis answer'd, they decay more without in, and tho' Mony as to it self, do not deteriorate; yet a Principal may perish wholly to the Creditor, but Land cannot; Besides, he that Puts out his Mony, is at least depriv'd of its Use, in order to Gain, which is equivalent to a Decay, in House, or Land; And what doth a Horse, or House yield by Keeping unlett?

Greg. of Nyssa, in his 4th Hom. upon Ecclesiasticus, Elegantly delivers himself in these Terms: *Fenus qui aliud Latrocinium & Parricidium nominaverit*, &c. Whoever shall stile Usury a second Robbery, or Murthering of a Parent, will say no more than becomes. For what matters it, whether you break a House as a Thief, to seize another's Goods; or Assassinate a Man upon the Road to take what he has; or whether by Necessity of Paying Use-Mony, you get what appertains not to you? God said to the living Creatures, be fruitful and multiply. But the Brood of Gold, of what Matrimony do's it come? What Mother gave it Conception? &c.

Ans. Who sees not, how enormous the Usury must be, against which, S. Gregory declares, with this Eloquent Flourish?

But

But if no Murther of Parent, no Robbery, no Assassination, be incident to the Putting out of Mony, this cannot be the Usury, at which he aims. A just Contract is the Matrimony, from which the Brood of lawful Interest comes; publick Conveniency is its first Parent; whereas the Usury against which he inveighs, *was*, (they are his Words;) *Conceiv'd by Avarice, brought forth by Iniquity, Cruelty being the Midwife.*

S. Chrysostom. Hom. 57. upon S. Matth. appears much of the same mind; *Quid irrationabilius quam ut sine Agro, Pluvia, & Aratro seminare contendas?* &c. What more irrational, than to Sow without Land, Rain, or Plow? I give, and grant, says the Usurer, *Not to have and to Hold, but to have more Return'd.*

Ans. Granting it were a madness to Plow without Land, Rain, or Plow, as it were, to Sow in the Air; yet I am of Opinion, that neither the Saint, nor any other would deny; there are other ways of just Gain, without Land, Rain, or Tillage; whereof one is, the Putting out of Mony at Use. In the words of the Usurer: *I give and grant, not to have and*
G 4
hold,

hold, but to have more Restor'd; Usury is both expos'd, and condemn'd; for in the Terms Giving and Granting, is express'd an Usurer's Lending, in order to Receive more thereby; and that more, was at the immoderate height of that Age.

I close this *Chapter*, Entreating only the Reader, to consider, whether these, and like Allegations, are not equally against all Princes, Exchequers, and Banks in Christendom, beginning from that at *Rome*, which ought to be a President as to Conscience? For tho' such as place their Mony in the Bank of *Rome*, to take away even the Shadow of meer *Lending*, cannot call it in at Pleasure, yet they may Sell the Pension, or Interest they duly Receive; and so Reimburse themselves of their Principal, and there never being scarcity of Buyers, it comes to be equivalent to the Power of Calling it in; Which being so, I hope *Du Tertre*, and his Adherents, will grant *Rome* to be no less Vers'd in Scripture, and the obliging Authority of Holy Fathers, than themselves; and yet not so Presumptuous, as to run, and Act in opposition to the said Authority. It remains now to discuss

discuss, whether it succeeds better with him, in his Pretensions to Popes and Councils?

C H A P. XV.

Of the *AUTHORITIES* of Councils.

THE Quotations taken out of the Decretals, and some Synods, make me suspect, that either *Du Tertre*, understood them not, or mistook the Question. The cause of this my Apprehension will appear, in the Examination of what he Produces.

I say not, says he, That the Council of Nice. Chap. 17. Forbad Usury to the Clergy, each one Interpreting the Place, in his own Sense; But the Council of Carthage hath Prohibited the Clergy to Exact Interest of any Kind: c. 16. Nullus Clericorum amplius recipiat, quam cuiquam commoda verit, Let none of the Clergy receive from any one more than he Lent.

Ans.

Ans. Much to the Purpose ; to receive more than is Lent , and on the Score of Lending is Usury , so that the Definition of Usury , has the Councils Liking. Yet what if the Council , should have forbid the *Clergy* to Putt out Mony at Use , as improper to their Calling ; It nothing concerns the Layety nor questions its Justice , but now it is in Practice with *Clergy* , as well as *Layety*. Wherefore Doctor *Sage's* President of the English College at *Doway* , being Demanded by a Person of Quality , of the Opinion of his Community , as to the Case , with great Ingenuity Answer'd , they were Divided , for such as had Mony to put out , thought it Lawful , such as had none were against it.

What he brings out of an *Epist.* of *St. Leo* , to the Bishops of *Campania* , is much of the same Strain , the Pope orders Punishment for those , who Practice Usury , and Strive to grow Rich by it. *Qui usurariam exercent Pecuniam & fanore volunt ditescere.*

Ans. Had *Du Terre* prov'd the Common Practice Usury ; This and the Rest , might have been Serviceable to him. But to suppose it to be Usury without Proof ,
and

and then to Condemn it as Prov'd is not fair, but a sort of Juggle, to amuse the unlearned with Quotations,

Gratian is Cited in the 2^d. Part of his *Decretals*, Cause the 14. q. the 3. c. 4. who out of an Ancient Council of *Agde*, held the 6th. Century, *An. 506*. Defines *U*-*fury*, *Usura est*, &c. *Usury is when more is Required than was given; as for example, if you give 10s. and require more Back, or a Bushel of Corn, and Exact somewhat above,*

Ans. Giving is taken there for Lending, and that to the Poor, as may be gather'd from the Smallness of the Sums; Besides in Reality, in our Case, one receives no more, than he gives; for a yearly Improvement, being worth at least Five *per Cent.* of this he's made Master, who receives the Principal. So that even in Compliance with the Decision as it lies, no more is taken than given.

This is all, the Author could Pick, out of Ancient Councils, against which, he Apprehending length of Custom had Prescrib'd, he passes to later Decisions. A Transition which betrays, either Shallowness, or Prevarication, as
to

to the Cause he undertakes, since Custom is the best Interpreter of Law. Lib. 37. ff. de Legibus Optima Legum Interpret est Consuetudo. Now Usury being against the Law of God, no Custom can prescribe against the said Law, but it has Prescrib'd in favour of the Common Practice, as he Apprehends; Therefore the Common Practice can be no Usury, and if Custom of time Pass'd, could Prescribe against the Ancient, why may not present Custom Prescribe against what he Quotes of Fresher Date? For that both Clergy and Regulars, take up, and put out Money as Occasion requires, 'tis too well Known now a days, to be denied.

Little or nothing therefore to his Purpose, being to be gathered out of General Councils, Du Tertre passes to Provincial Synods In that of Milan under Pius Quartus, it is forbid to take Interest, upon any Account whatsoever Yearly, for Money offer'd to be Paid in. In that of Mecklen in the time of Pius Quintus. 1566. Du Tertre seems to Triumph, tho' of no General Obliging Authority. Its Decree is, Synodus Statuit & ordinat ne quis Tutor, &c. The Synod Decrees and Ordains that no Trustee,

Trustee or Guardian, under Pretence of Increasing the Patrimony of their Pupils, Lend the said Pupils Money to receive Yearly, a certain Lucre above the Principal; with Power of calling in the said Principal, Declaring such Bargain to be Usurious and that against such Lenders as Usurers, to be Proceeded to Punishment, as Prescribed by Canons.

Ans^r. The Synod of Milan Determining only as far as Cited by Du Tertre, in the Case Money be offer'd to be Paid in, rather Allows, than Disallows Interest for it, when not offer'd to be Pay'd in, or when it is Put out, according to the Rule, *Exceptio firmat Regulum in alijs*; but the Synod in express Terms agrees unto it, when Granted by Law, closing its Prohibition, *Nisi quatenus jure, nominatim permittatur*. In so much that Bonac, tho' a Milanesse thought it not worth his while, to take notice, of what no ways opposes his, and our Opinion. Bail therefore the Learned compiler of Councils Tom. 2do, Pag. 492. judges the Council to be no ways in force against the Common Tenents; for were it, he Rightly Instances, *Cum ergo Bonacina, & alij*

alii Scriptores hujus Provincia, Plures ejusmodi Casibus licitos tutari sunt sine cujusquam offensione? Why then has Bonacina, and other Writers of this Province, defended many of the Cases Mentioned in the Council, without offence to any?

The *Synod of Mecklin*, in the sense *De Tertre* wrings it to, is not excepted of, in the very Province, which only it could Oblige, as appears from constant Practice. For my Part, I Guess the Decree strikes, at deceitful Trustees, and Guardians, the word under Pretext Denotes as much. They commit Usury, in taking Money for Lending; express'd twice in the Decree, they Cloak it under a Specious Pretext, of the *Orphan's* Profit, and it is no wonder if such Practices be Condemn'd by the *Synod*. Setting aside this or a like Gloss; The *Synod* would pass for Extravagantly Uncharitable, in forcing *Orphans*, to live from their Infancy, upon the Principal, to the Beggaring them, when come to Age; Wherefore even our Statute Laws, tho' Judg'd by some Dubious in the Point of Loan, allows the Putting out *Orphan's* Money. On the other Part with what

Conscience can a Guardian expose his *Pupil's*

pil's Mony, without securing the Principal, and Power of calling it in?

Trustees therefore may put out their Pupil's Stock, so it be effectually for their Profit, as it is done without reclaim either of Church, or Magistrate, taking always such Methods, as may exclude not only the Intention, but all appearance of Usury. Hence *Lessius*, not long after this Synod, writing in that same Diocess makes no mention of this Decree, but justifies the way of Putting out Orphan's Mony; and *tho', he thinks fit it should be forbid for the future*. I conceive, he added that Clause, for fear Ignorance might be an Occasion to some of committing Usury, by taking Interest purely for Lending, which without Usury, might have been bargain'd for, on other Accounts, and in due forms.

The Assemblies of *Melun*, *Bordeaux*, and *Rheimes*, are fully Answer'd, by what has been said, and the Practice of all *France*, in Case of real Opposition, Oversways in Authority, those few Particular Synods.

The Assembly of *Melun*, *Du Tertre* tells us: repeats the words of that of *Milan*,
conclu-

concluding with the Saying of Christ, *Lend hoping nothing thereby*; the like doth that of *Bordeaux*. The Council of *Rheims*, of greater Authority, as being approv'd by the Pope, clearly allows the Doctrin delivered hitherto of Usury, In these Terms, *Tit. de Fanore cum sacra littera excludant eum a Divino Tabernaculo, qui Pecuniam dederit ad Usuram aperteque; nuntient, ut mutuum Demus, nihil inde sperantes: Quisquis prater sortem Principuam ex mutuo aliquid amplius exegerit, vel acceperit, cujusunque generis illud sit modo Pecunia estimari possit Usurarius esse censetur*. Since the Holy Scripture, excludes him from the Tabernacle, who gives his Mony to Usury, and manifestly declares, *That we lend hoping nothing thereby*; whoever shall Exact, or receive above the Principal of what was Lent, of whatsoever kind it be, so it be worth Mony, let him be judg'd an Usurer. Remark well the Expression, *For what was Lent*; there lies the Stress: But what Council, or Assembly ever say, That Mony Put out, as in our Case, is Mony Lent?

C H A P. XV.

The A U T H O R I T I E S of
Popes.

Alexander the III. having condemn'd Usurers in the Councils of *Tours* and *Lateran*; To the Case of the Arch-Bishop of *Genoa*, proposing the Dealings of some Merchants, who Sold dearer for retardment of Pay, writes thus: *Licet contractus hujusmodi ex tali forma non possit censerì nomine Usurarum, nihilo minus tamen venditores Peccatum incurrunt, cum cogitationes hominum, omnipotenti Deo nequeant occultari.*

Ans. What could be alledg'd less favourable, to *Du Tertre's* Purpose? For the Pope seems to excuse from Usury, what Divines condemns for such; *Tho' such Contracts*, says the Pope, *as to their forms*, be not to be held Usurious, yet those that Sell after that Manner, sin; whereas

H Divines,

Divines, affirm to be Usury, to take any thing for *pure Delay* of Payment; the said Delay being essential to Lending. The Pope's then Meaning I take to be, that such a Contract, cannot be prosecuted in the exterior Court as Usurious; yet that such Dealers, for the ordinary sin, by forcing those; who cannot give present Mony, to pay for the forbearance, which is plain Oppression, arguing an Usurious intention of Gain, such to have been His Holinesses Meaning appears from the ensuing Clause: *Since the Thoughts of Men, cannot be hidden from the Omnipotent God*; If this wise Pope was so Cautious, as not to condemn for express Usury, Interest for pure Forbearance; Would he approve the forwardness of some, no Popes, in condemning of Usury, an Interest settled by common Agreement, or by Covenants, and Titles thought just by Divines? One of these is the danger the Seller undergoes, of losing both his Ware and Price, with the Trouble in recovering it, and that Consideration on this score may be taken, is not only the Opinion of *Iconnes Martinez de Prado*. *Tom. 2. Theolog. Moralis,*

c. 27. §. 2. Citing 16 more, but before him of the Learned *Sylvester*, Master of the sacred Palace, and eight others quoted by him, insisting on the Doctrin of their great Master, *St. Tho. Opusc. 73. c. 10. Si enim Venditor Rem suam, &c. If a Seller intends to sell Dearer, not for the Time only, but for the Damage like to befall him, or to redeem the Vexation, probably to be suffer'd, in Recovering his Debt, either by Reason of the Malice, or Impotency of his Debtor; then he's excus'd from sin.*

To *Urban the III.* three like Questions were Propos'd. *cap. Consuluit; Whether those were to be look'd upon as Usurers, who sold Dearer by reason of Staying for their Money? Or those who tacitly intended it? Or finally those, who would not Release the Buyer, without drawing Advantage on that Account? The Pope declares them Usurers, as sinning against the Command. Lend, hoping nothing thereby.*

Ans. Voluntary Forbearance, is equivalent to Lending; and therefore the Seller is no more oblig'd, to forbear, than to Lend; but in case he forbear, he doth as good as Lend, and in that

Case sins against Christ's Precept. And this is the full of the Pope's Answer: He makes no mention of any other Title, as the Prejudice ensuing to a Tradesman, and hinderance of Gain for want of his Mony, or the danger of no Pay, or the Losing all; these are considerable, and it is but just, the Buyer should make them good.

Leo the 10th. in the Lateran Council, having alledg'd Christ's Words. *Lend hoping nothing thereby*: Concludes; *Ea enim est Propria Usurarum Interpretatio, quando videlicet ex usu Rei qua non germinat, de nullo labore, nullo sumptu, nullo periculo, Lucrum fetu conquiri stadetur.* For this is the proper Interpretation of Usuries, viz. When one Studies to Gain, and receive Profit from things which are unfruitful, without Labour, without Expence, and without Danger.

Answ. I should think the Author had made it his Employment to cull out places, to the settling what he pretends to overthrow. The Pope in that Bull, silences the Zeal of such, as impugned the Mounts of Piety, as Usurious, having premis'd the Reasons invented by them;

them; of those Reasons, one is contained in the Words, which *Du Tertre*, either by oversight, or disingenuity, makes to be the Pope's. Whereas His Holiness, having related the Arguments of such, as disapprov'd of the Mounts of Piety, as Usurious, encourages the erecting of them, by granting Indulgencies; And who shall either by word or writing, Preach or Dispute against them, he makes liable to the Punishment of Excommunication. *Lata sententia, nullo obstante Privilegio.* That is, *Ipso facto*, to be incurr'd no Priviledge whatsoever withstanding it. What greater evidence of this Pope's Judgment of the invalidity of their Reasons, and amongst the rest of this objected, which *Du Tertre* inconsiderately brings for the Pope's, tho' rejected by His Holiness. But *Du Tertre* would appear some Body.

To answer Reason with Reason. That Money cannot fructify, has often been denied, and is apparently untrue, in the Gain to be made in Purchasing good Pennyworths; insomuch after all, *Du Tertre* himself, *Pag.* 134, and 135. acknowledges that Saying to be verified

only of *Mony Lent*, which being no more the Lender's, but the Borrowers, can yield nothing to the Lender ; By reason, *Res fructificat Domino*. The thing fruits to its Owner, and so far he is in the Right ; but seems not to reflect, that it may fructify before 'tis Lent, and then to Bargain for what it may yield, is no *Lending*, nor *Usury*. Nor is it without Labour, Expences, and Danger, that Mony is Lett out. What Labour in Getting it ? In Preserving it ? To omit lesser Cares and Troubles, in drawing up Deeds, Counting? &c. The want of its Profit, Is it not a sort of Charges ? The danger of Damage, the Exposer of his Mony, takes upon himself, which may happen from frequent Casualties, for want of his Mony, as in Accidents of Fire, Sicknes, Imprisonments, War, or the like ; Is it not very Sensible ? And where is the Principal ? And yet by confession of those very Divines, no *Usury* where such Causes intervene.

But *Greg.* the 9th, even excludes even the Danger of *Losing the Principal*, from being a good Title. *Cap. Naviganti vel eunti ad Nundinas, &c.* The Person Lend-

ing

ing a certain Summ of Mony, to one that Puts to Sea, or go's to a Fair, receiving somewhat above the Capital for taking upon himself the Danger, is to be judg'd an Usurer.

Ans. How doth this cohere with the Objection of the Precedent pretended Authority? There 'tis required there be no danger; Here, even in case of Danger, 'tis made Usury to take Interest. *Bernartius* cited by *Laym.* n. 13. *de Usura.* suspects a Mistake of Print, by the Omission of a *Non*. So that in the place of *is to be judg'd*, ought to be read, *is not to be judg'd*. This is clearly gather'd from the Connexion, as you may see there. If this like you not, e'en take the words as they lie. He that Lends ventures the Danger of Losing; so that to Bargain for that Danger, by way of Insurance, is either not to Lend, or taking for the Danger of what is Lent, is Usury.

Innocent the 3d. Declares Usury to be against both Testaments.

Ans. We say 'tis also against the Law of Nature, and by its being so, we have evinced, that the Putting out Mony, as in Practice, is no Usury.

To make an end of tiring my Reader with these and like Citations; *Custom*, the best interpreter of Authority, and the *Definition* of *Usury*, by which all *Usury* must be tried, are fully sufficient, to solve whatever Objection. I have not made it my Business to trace *Du Tertre*, step by step, he is ever upon the wing, and rather flutters, than walks to amuse with the Noise of his *Prones*, where he cannot convince with Reason, himself Presumptuous, inflicts that Character, upon three Divines of Known Ability, *Medicina*, *Lessius*, *Valentia*, Pag. 138. where he abuses his Reader, by imposing upon *Lessius* very grossly, as will appear to the Examiner, from whence I gueis, how he treats the others, which I have not by me. To what purpose, Pag. 145. doth he unite Opposits, as *Lessius*, and *Valentia*, with the Author of the Letter he impugns? Is it any wise astonishing, that Opposits should contradict one another? His inference, that the Danger of the Principal is greater, when in the hands of the Poor; therefore more may be taken from them, than of the Rich, is a pure Inference of his own Brain, without

without Premises. Who commits any considerable Sums to the Poor, and knows he not that Interest tax'd by Law, cannot be exceeded; and that this only increases, as the Sums putt out do, less for little Sums, and more for greater? The Law therefore is favourable to the Poor, where the Danger of the Principal is greater.

Who will not smile at the Man's Eloquent Simplicity, *Pag. 144*? Where after pretensions to Universality, after having in one Leaf, no less than thrice rallied up Fathers, Popes, and Councils, by way of Crowning all he tells you, That *many Learned Doctors of Sorbon, and of the Faculty of Divinity of Paris, among which, were the most Illustrious Curats of that great City have Signed the Common Sentiment of the Church in the Matter of Usury.* I suppose in Condemning the common Practice.

Ans. Was it their Signing that made it common? Or if common before, what need of their Signing? They Sign'd then what was not common to all, and what he would make common. But how? By the Signing of Many. He says, not by the Signing of all; he says not of the greatest

greatest Part, the opposit then, might be as common, as what they Sign'd. Many Doctors therefore, and they Doctors of the *Sorbon* too; Many Curats, and they Curats of *Paris* too, with whole Towns, and Provinces in *France*, practising what he abusively stiles Usury, are of poise enough, not only to counterballance, but so outweigh the Authority of his many Doctors and Curats, as to the common Sense of the Church. And the Bishops of *France*, Are they to be slighted, because silent Lovers of Peace, and Enemies of Novelty? Can they be thought to be less concern'd for the good of Souls, or less knowing than some Curats of *Paris*? And their Silence, is it not a loud rebuke, to his Many? And the Divines of other Nations, Are they to pass for Shadows? With all respect due to the *Sorbon*, be it said, o'ther Countries, have given, and daily afford to the World, Men as Eminent for Learning; Why not then to be relied on, as well as his Many? For which we have his bare Word. *England* alone has oftner given Masters to the *Sorbon*, than the *Sorbon* to *England*.

Perchance

Perchance *Du Tertre* might have insisted, as some of late have done, upon the Propositions condemn'd by *Innocent* the 11th, Anno. 1679. I therefore set them down, leaving to the Reader, to judge how far they affect our Case.

The 24th Proposition runs thus : *Usura non est, dum aliquid ultra sortem exigitur, tanquam ex Benevolentia, & gratitudine debitum, sed tantum si exigatur, tanquam debitum ex Justitia.* 'Tis no Usury if something above the Principal be exacted, as due by way of Benevolency, and Gratitude, but only as exacted by way of Justice.

Ans^w. The Proposition is deservedly condemn'd, and condemns it self. For a Benevolence, or spontaneous Act of Gratitude, cannot be said properly to be Due, and therefore to Exact it as Due, is Injustice; and if for the Use of a Principal Lent, 'tis Usury. To receive a Benevolence, or Gift by way of Gratitude, is not condemned: Nay to Exact a Gift once made, is not even Injustice, it being his, to whom it is given; now by the general Agreement this Gift is made, antecedently to the Putting out Money,
it

it may therefore be required ; Besides, the Proposition reaches none of the forementioned ways, or Titles, for which Interest is Due, by way of Justice.

The 41. Proposition is: *Cum Mutuata Pecunia sit Preciosior numeranda, & nullus sit qui non Majoris faciat Pecuniam Presentem quam futuram, potest Creditor aliquid ultra sortem a Mutuatario exigere, & eo titulo excusari.* Since Mony Lent, is better than Mony to be Pay'd, and that there is no Body, who doth not esteem Present Mony, more than future, the Creditor upon that Account, may require something above the Principal, from the Borrower, and so be excus'd from Usury.

Answ. Condemnations being *stricti Juris*, fall upon Propositions Precisely as they lie; Now this Proposition taken as it is worded, is both Scandalous and false. For one that Lends, parts with present Mony, upon future repayment, a token they are equal, at least, in his esteem. Is he no Body? Besides, difference of time, alters not the worth of Mony. Whence it ensues that to ground a Title of receiving Interest, upon so clear

clear an untruth, and Futurity of repayment, essential to Lending, is to excuse taking Interest for Lending, which is Scandalous, and therefore justly Condemned.

To the aforesaid Propositions, may be added the 47th. Among those Condemn'd by Alex. the 7th. *Licetum est mutuanti aliquid ultra sortem exigere si se Obliget ad non repetendam. sortem usque ad certum Tempus.* 'Tis Lawful for a Lender, to Exact something above the Principal, provided he Oblige himself, not to call it Back, for a Set time.

Ans. Who sees not, that such a Lender would have Interest, for a pure Forbearance, which is Flat Usury, as we have often Affirm'd, and follows from its Definition. So that the Propositions Condemn'd by the late Popes, leave our Case untouched. And no ways oppose what has been said for the Lawfulness, of Putting out Mony, consider'd as was Promised, as to the Law of Nature, Scripture, and Church.

I should not have Concern'd my Self in an Answer to Monsieur Du Tertre's Book, long since Printed, and I Question
not

not, but already Answer'd, by some of his own Nation, had not his Genius pass'd the Seas, and appear'd with no other Weapons than his, to the Terror of Timorous Souls, and perplexing of Consciences.

CHAP. XVII.

The CONCLUSION.

TO Conclude as I Prefac'd. Having presented the Reader, according to Promise, with what your Reformers, in the Point of Putting out Mony, have to say to Us, and we in Answer to them, let Him call a Jury, of his Impartial Thoughts, to the Case of Putting out Mony, and upon Evidence, brought in against it, let him Condemn it, of Usury. But if no Evidence appears, Possession of its Innocency still holds, Grounded in Agreement, and Custom, upheld by Judges, Justified by Divines, upon several Titles, and generally Practis'd. If Scripture, Church, and Fathers in
veighing

veighing against Usury, reflect not upon it, if the Law of Nature disallows it not, let it be clear'd at the Barr, of unbiass'd Reason. Let the Practisers make Conscience, of Real Sins; let them of their Just Gains, be Charitable to the Needy; let them hope no Increase for *Lending*, but from God, yet at the same time; they are Rightly inform'd, they have no Obligation of Prejudicing themselves, but a Duty to Improve Honestly the Talents God has left with them, by Putting them out, at an easy Rate. It is a service they owe to the Publick, for which we are Born. Such as Scrupulise at it; let them much more make Conscience of judging others. Let them be Careful, lest upon Surmises of Usury, or rather under a false Pretext, they become Slaves of Avarice, make their Coffers *Temples*, and Mony their *Idols*; by so doing, they Clip the Common Stock; so that the Share they have, goes no more, they cast Trade into a Deep Consumption, by depriving it, of its Nourishment, and wholly Cross the design of the General welfare of a Nation, Mantain'd by a Circulation of Mony, as our Bodies are, by a Circulation of Blood.

No

No less Zeal was shown, by some Preachers, and Divines, against the *Mounts* of Piety, than since has been, by a few others, against Putting out of Mony; When the Pope Heading a Council, in regard of the Poor; and Common Necessities, judg'd fit not only to Curb it, but when Transported either to Words, or Writing, to Excommunicate it as a Disquiet to the Christian World. The Rule of Law, *Quod qui commodum sentit, onus quoque sentire debet*, on which the Pope and Council appear to ground themselves, is of no less Force in our Case: The Rule is: *That he who Partakes of a Conveniency, ought also to share of the Burden annex'd to it.* It is for Conveniency Mony is taken up, the Burden annex'd to it, is Interest, which for Just Considerations, the Law judges Reasonable. It were a Piece of Signal Temerity, to Question the said *Mounts* of Piety, and if the Common Practise have the same Reason, even with some advantage, were it not too Venturesome, to Condemn it? Would not the Censure by Parity of Reason, equally affect both? And were not this to forfeit, the Respect, and Submission

mission due to Popes, the *Lateran* Council, and Christendom in General? The ends of the Mounts of Piety, is to relieve such as Necessity compels to take up Money at exorbitant Rates; This also is Provided for, by the common Practice, tho not so fully, it being not easy to find Money to take up; whereas the said Mounts are ever ready to Supply; on which Account they are to be wished for in this Realm. The Mounts of Piety, towards the Maintenance of Necessaries, receive somewhat more, than Current Interest; with Current Interest alone, the common Practice contents it self, the Mounts are secured of their Principal; the common Practice for most part leaves it Hazardous. Is it the taking less? Is it the Hazard that creates Usury? If not, How can that Guilt be charged upon the common Practice, and not the Mounts of Piety? And to reflect upon them as Usurious, Doth it not betoken undutifulness, and more want of Charity, than provision of true Zeal, more Temerity, than Prudence.

The simplicity of the Dove, is to be guided by the Prudence of the Serpent

H

Believe.

Believe not every Spirit, (says *St. John*, 1 *Epist. Chap. 4.*) Too much Austerity of Doctrine, favours more of Affectation, than Discretion, and drives oftner at Libertinism, than true Reform, every one inclining to shake off the Yoke, who render too heavy. Excess of Rigor is a kind of Usury, in that it extorts upon Conscience to the Oppression of a weak Brother. The way to Heaven is narrow, we ought not to streighten it more; nor to lay stumbling blocks in the way.

This was the Sense of the most Learned and Illustrious Order of *St. Dominick*, in the Gloss upon the Prologue, to their Constitutions, *Tex. 1. §. 3.* to those Words, *Cum Ordo Noster, &c. Declaramus, &c.* Say they, *We declare, That three things Chiefly hinder the saving of Souls: of these, the Third is too much Rigor, and Austerity in Counsels, and Opinions, for Men are so terrified with them, as to neglect the Salvation of their Souls; wherefore Rigor and Severity, are to be Relented, as much as may be, and Men are to be Treated with Benignity.*

Yet nearer to our Purpose, the great Son of so Wise, and Religious a Parent, *St. Tho*

St. Tho. quodl. 9. Art. 15. in Corp Discourses it thus : *Omnis Questio, in qua de Peccato Morali queritur, &c.* 'Tis dangerous to decide a Question, treating of a Mortal Sin ; if no express Truth appears ; by reason the Error, by which it is apprehended to be mortal, what is not mortal, binds under Mortal. The express Truth against the Common Practice, has not yet been discovered.

Du Tertre therefore, and those of his Humor, should have taken and Con'd the Lesson, being of so high Importance, given them by the Renowned Chancellor, *John Gerson, lib. 4. de Vita spirituali, Littera. O. pag. 3. Doctores Theologo, &c.* Doctors of Divinity, must not easily conclude certain Actions, or Omissions, to be mortal Sins ; for by such Wilful, Rigid, Hard, and too strict Assertions, Men are never drawn out of the Mire of Sin, but are plung'd into another, deeper, because more Desperate. To what Purpose then to render more bitter, and heavy the Yoke of Christ, which is sweet, and the Burden which is light ?

This had been much to *Du Tertre's* Purpose, and perchance might have al-

lay'd his too fervorous Rigor; when
Pag. 172. he pretends with a Scrap of
 two of a holy Father, to block up the way
 to Heaven, and to exclude all Merchants
 and Tradesmen from Eternal Bliss. And
 not this to endeavour to render Salvation
 and God's Precepts Morally impossible.
 Or at least as impossible, as it is for Hu-
 man Society to be maintained without
 Merchandizing and Commerce? Doth
 it not reflect upon Providence, as Esta-
 blishing a Religion incoherent with all
 Trading, so necessary to the Welfare
 and Preservation of Mankind? It is a Pe-
 culiar Genius rules his Pen; Whether
 for love of Novelty, or to appear some-
 body in the World, or out of mistaken
 Zeal, to correct what needs no Amend-
 ment, it is not for me to decide. As to
 my self, whatever I have writ in De-
 fence of the Common Practice, I shall
 entirely submit to better Reason, it is
 my Duty so to do; and having done
 what I thought my Duty, to the quieting
 of Conscience, in the Case of putting out
 Money, I end.